IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

EDDIE SRYGLEY & RUTH ISHAM, husband and wife,	)	
Plaintiffs,	)	
vs.	)	No. 89-C-1000-E
CENTRAL MUTUAL INSURANCE COMPANY, a foreign corporation,	)	
Defendant.	)	

STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW the Plaintiffs, Eddie Srygley and Ruth Isham, and the Defendant, Central Mutual Insurance Company, and pursuant to Rule 41 of the Federal Rules of Civil Procedure jointly stipulate to dismiss the above captioned matter with prejudice to refiling on the grounds and for the reason that all causes of action have been compromised and settled.

Respectfully submitted,

Kevin A. Schoeppel - OBA# 10467
Attorney for Plaintiffs
Eddie Srygley & Ruth Isham
1408 South Denver
Tulsa, Oklahoma 74119
(918) 582-5444

EDDIE SRYGLEY, Plaintiff

RUTH ISHAM, Plaintiff

Respectfully submitted,

KNOWLES, KING & SMITH

By _____

DENNIS KING - OBA # 5026
Attorney for Defendant
Central Mutual Insurance Company

603 Expressway Tower
2431 East 51 Street
Tulsa, OK 74105
(918) 749-5566

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 15 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

KELLEE JO BEARD, by her parents and next friends, Patty and Bill Beard, et al.,

Plaintiffs,

vs.

THE HISSOM MEMORIAL CENTER, et al.,

Defendants.

No. 87-C-704-E

ADMINISTRATIVE CLOSING ORDER

The Court has been advised by counsel that this action has been settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown.

ORDERED this 15th day of August, 1990.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

HAP/jch

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MARY LOU DOW and FLOYD EUGENE DOW,

Plaintiffs,

vs.

ECONOMY FIRE & CASUALTY COMPANY,

Defendant.

No. 89-C-963-C

STIPULATION OF DISMISSAL

COME NOW the Plaintiffs, Mary Lou Dow and Floyd Eugene Dow, and the Defendant, Economy Fire & Casualty Company, by and through their respective attorneys, and in accordance with Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedures, hereby stipulate to the dismissal with prejudice of all claims and causes of action involved herein with prejudice for the reason that all matters, causes of action and issues in the Complaint have been settled, compromised and released herein, with each party to bear its own costs.

ROBERT L. SHEPHERD
Attorney for Plaintiffs

HARRY A. PARRISH
Attorney for Defendant

Entered as to Doolin only

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
IN OPEN COURT

AUG 15 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

NINTH DISTRICT PRODUCTION CREDIT ASSOCIATION,	)	
Plaintiff,	)	
v.	)	Case No. 87-C-546 C
BILLY GENE DOOLIN, et al.,	)	
Defendants.	)	

PARTIAL
JOURNAL ENTRY OF JUDGMENT AND DECREE OF FORECLOSURE

This cause comes on for hearing before me, the undersigned Judge of the United States District Court for the Northern District of Oklahoma, on this 15th day of August, 1990, the following appearances being entered by counsel:

PARTY	COUNSEL
Ninth District Production Credit Association, an association organized and existing under the Farm Credit Act of the United States of America, successor in interest to Chandler Production Credit Association ("NDPCA")	G. Blaine Schwabe, III and Kevin M. Coffey of Mock, Schwabe, Waldo, Elder, Reeves & Bryant
Billy Gene Doolin, Wallace J. Doolin and Mark Lee Doolin	W. C. Sellers, Jr. of W. C. "Bill" Sellers, Inc., and Stephen H. Foster
Virginia E. Orr, f/k/a Virginia E. Doolin, Sara E. Canfield, f/k/a Sara E. Doolin, and Susan L. Doolin	John M. Young of Young & Young

The Court, having reviewed the pleadings filed in this case and being fully advised in the premises, finds that this Court has jurisdiction over the said parties and the subject matter of this action.

The Court further finds that Billy Gene Doolin, Wallace J. Doolin, Mark Lee Doolin, Virginia E. Orr, f/k/a Virginia E. Doolin, Sara E. Canfield, f/k/a Sara E. Doolin, and Susan L. Doolin (collectively, the "Doolins") have been served with summons and, by their counsels' statements made in open court and by their counsels' signatures affixed to this Journal Entry of Judgment, have agreed that judgment should be entered against the Doolins and in favor of plaintiff NDPCA.

The Court further finds that plaintiff NDPCA and defendants Doolins have submitted to the Court for its approval a Stipulation for Judgment, stating that defendants Doolins are indebted to plaintiff NDPCA in the sum of $374,623.67, which includes accrued interest through the date of judgment, by reason of the matters stated in plaintiff NDPCA's Second Amended Petition, and that said Stipulation for Judgment should be approved by the Court as requested by the parties.

The Court further finds that the indebtedness owed NDPCA, as set forth in the Stipulation for Judgment, is secured by first, valid and prior liens in and to the surface and surface rights only of the following described real property located in Creek County, State of Oklahoma:

> The West Half (W½) of the Northwest Quarter (NW¼) of the Southwest Quarter (SW¼) of Section Five (5), Township Nineteen (19) North, Range Eight (8) East (Surface and Surface Rights Only);
>
> The West Half (W½) of the East Half (E½) of the Northwest Quarter (NW¼) of the Southwest Quarter (SW¼) of Section Five (5), Township Nineteen (19) North, Range Eight (8) East (Surface and Surface Rights Only);

The West Half (W½) of the East Half (E½) of the East Half (E½) of the Northwest Quarter (NW¼) of the Southwest Quarter (SW¼) of Section Five (5), Township Nineteen (19) North, Range Eight (8) East (Surface and Surface Rights Only);

The South Half (S½) of the Southwest Quarter (SW¼) of the Northeast Quarter (NE¼) of the Southeast Quarter (SE¼) of Section Six (6), Township Nineteen (19) North, Range Eight (8) East (Surface and Surface Rights Only);

The Southeast Quarter (SE¼) of the Southeast Quarter (SE¼) of the Northwest Quarter (NW¼) of the Southeast Quarter (SE¼) of Section Six (6), Township Nineteen (19) North, Range Eight (8) East (Surface and Surface Rights Only);

The South Half (S½) of the Southeast Quarter (SE¼) of the Northeast Quarter (NE¼) of the Southeast Quarter (SE¼) of Section Six (6), Township Nineteen (19) North, Range Eight (8) East (Surface and Surface Rights Only);

The South Half (S½) of the Northwest Quarter (NW¼) of Section Six (6), Township Nineteen (19) North, Range Eight (8) East (Surface and Surface Rights Only); and

Southwest Quarter (SW¼) of Section Six (6), Township Nineteen (19) North, Range Eight (8) East (Surface and Surface Rights Only).

(hereinafter, the "Settlement Property", which is limited to surface and surface rights only).

The Court further finds that the First State Bank of Oilton has failed to object or otherwise respond to NDPCA's motion for default judgment, or in the alternative, summary judgment, and therefore, said motion should be sustained and judgment entered against the First State Bank of Oilton as requested in said motion and NDPCA's Second Amended Complaint.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Stipulation for Judgment is approved by the Court, as requested by the parties herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff NDPCA have and recover an in rem judgment against the Doolins in the amount of $374,623.67, which includes accrued interest through the date of judgment, and after the date of judgment herein at the post-judgment interest rate of 1.88% per annum until paid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the liens of NDPCA in and to the Settlement Property are hereby foreclosed against said property, and the Settlement Property is hereby ordered to be sold, with appraisement (as plaintiff has so elected in open court), to satisfy the judgment herein; that special execution and order of sale in foreclosure shall issue to the U.S. Marshal for the Northern District of Oklahoma, commanding said official to levy upon the interests of the Doolins in and to the Settlement Property, to cause the Settlement Property to be duly appraised according to law, to proceed to advertise and sell the same, subject to any unpaid real property ad valorem taxes, as provided by the applicable laws of the State of Oklahoma, to apply the proceeds arising from said judicial sale as follows:

FIRST: In payment of the costs of said U.S. Marshal's sale and court costs awarded herein;

SECOND: In payment to plaintiff NDPCA the sum of $374,623.67, which includes accrued interest through the date of judgment herein, with

interest thereafter at the post-judgment interest rate of 7.88 per annum until paid.

THIRD: The remainder, if any, to be paid into Court to await further order of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the date of the sale of the Settlement Property under and by virtue of this Judgment, that all defendants or anyone claiming by, through or under them or any of them are hereby forever barred from asserting and are foreclosed of and from any and all right, title, interest, estate or equity in and to the Settlement Property or any part thereof.

UNITED STATES DISTRICT COURT JUDGE

APPROVED:

NINTH DISTRICT PRODUCTION CREDIT ASSOCIATION

By: _____
G. Blaine Schwabe, III - OBA #8001
Kevin M. Coffey - OBA #11791

Of the Firm:

MOCK, SCHWABE, WALDO, ELDER
REEVES & BRYANT,
A Professional Corporation
Fifteenth Floor
One Leadership Square
211 North Robinson
Oklahoma City, OK 73102
Telephone: (405) 235-5500

ATTORNEYS FOR NINTH DISTRICT PRODUCTION CREDIT ASSOCIATION

BILLY GENE DOOLIN, WALLACE J. DOOLIN AND MARK LEE DOOLIN

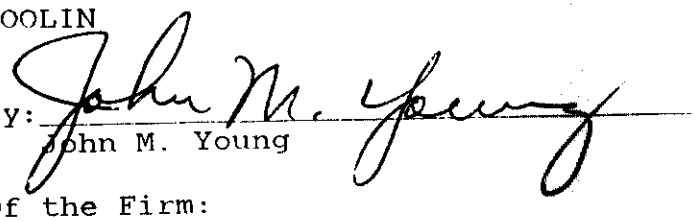
By: _____
W. C. Sellers

Of the Firm:

W. C. "BILL" SELLERS, INC.
P. O. Box 1404
Sapulpa, OK 74067-1404
Telephone: (918) 224-5357

ATTORNEY FOR DEFENDANTS BILLY GENE DOOLIN, WALLACE J. DOOLIN AND MARK LEE DOOLIN

VIRGINIA E. DOOLIN, NOW ORR, SARA E. DOOLIN, NOW CANFIELD, AND SUSAN L. DOOLIN

By: 
John M. Young

Of the Firm:

YOUNG & YOUNG
P. O. Box 1364
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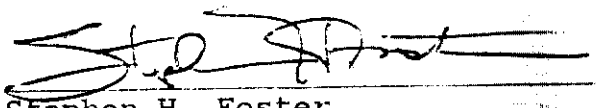
Telephone: (918) 224-3131

ATTORNEYS FOR VIRGINIA E. DOOLIN, NOW ORR, SARA E. DOOLIN, NOW CANFIELD, AND SUSAN L. DOOLIN

14/Doolin.JE

BILLY GENE DOOLIN, WALLACE J. DOOLIN AND MARK LEE DOOLIN

By: 
Stephen H. Foster

P. O. Box 815
Bristow, OK 74010
Telephone: (918) 367-3376

ATTORNEY FOR DEFENDANTS BILLY GENE DOOLIN, WALLACE J. DOOLIN AND MARK LEE DOOLIN

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
IN OPEN COURT

AUG 15 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

NINTH DISTRICT PRODUCTION CREDIT ASSOCIATION, Plaintiff,	)	
v.	)	Case No. 87-C-546 C
BILLY GENE DOOLIN, et al., Defendants.	)	

STIPULATION FOR JUDGMENT

Now on this 15th day of August, 1990, the Plaintiff, Ninth District Production Credit Association, an association organized and existing under the Farm Credit Act of the United States of America, successor in interest to Chandler Production Credit Association ("NDPCA"), and the Defendants, Billy Gene Doolin, Wallace J. Doolin, Mark Lee Doolin, Virginia E. Orr, f/k/a Virginia E. Doolin, Sara E. Canfield, f/k/a Sara E. Doolin, and Susan L. Doolin (collectively, the "Doolins"), submit to the Court for its approval and the entry of judgment, the following stipulation:

The Doolins are indebted, in rem, to NDPCA, by reason of the matters stated in plaintiff NDPCA's Second Amended Petition, in the sum of $374,623.67, which includes accrued interest through the date of this Stipulation for Judgment.

The indebtedness described herein is secured by first, valid and prior liens of NDPCA in and to the surface and surface rights only of the following described real property located in Creek County, State of Oklahoma:

The West Half (W½) of the Northwest Quarter (NW¼) of the Southwest Quarter (SW¼) of Section Five (5), Township Nineteen (19) North, Range Eight (8) East (Surface and Surface Rights Only);

The West Half (W½) of the East Half (E½) of the Northwest Quarter (NW¼) of the Southwest Quarter (SW¼) of Section Five (5), Township Nineteen (19) North, Range Eight (8) East (Surface and Surface Rights Only);

The West Half (W½) of the East Half (E½) of the East Half (E½) of the Northwest Quarter (NW¼) of the Southwest Quarter (SW¼) of Section Five (5), Township Nineteen (19) North, Range Eight (8) East (Surface and Surface Rights Only);

The South Half (S½) of the Southwest Quarter (SW¼) of the Northeast Quarter (NE¼) of the Southeast Quarter (SE¼) of Section Six (6), Township Nineteen (19) North, Range Eight (8) East (Surface and Surface Rights Only);

The Southeast Quarter (SE¼) of the Southeast Quarter (SE¼) of the Northwest Quarter (NW¼) of the Southeast Quarter (SE¼) of Section Six (6), Township Nineteen (19) North, Range Eight (8) East (Surface and Surface Rights Only);

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Southwest Quarter (SW¼) of Section Six (6), Township Nineteen (19) North, Range Eight (8) East (Surface and Surface Rights Only).

(hereinafter, the "Settlement Property", which is limited to surface and surface rights only), and NDPCA's liens in and to the Settlement Property should be foreclosed and said property should be sold in satisfaction of said indebtedness.

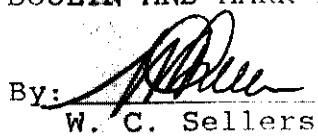
The in rem indebtedness of the Doolins to NDPCA, as set forth above, is valid and enforceable against the Doolins and the

Settlement Property. The Doolins have no defenses, rights of offset, counterclaims or the like whatsoever with respect to the claims of NDPCA for such in rem indebtedness or the foreclosure or other enforcement of the liens of NDPCA in and to the Settlement Property.

The Doolins agree and consent to the entry of judgment herein in favor of NDPCA for the amount of the in rem indebtedness stated above, and for foreclosure of the liens of NDPCA in and to the Settlement Property.

The Doolins agree and consent to all proceedings or actions as may be taken by NDPCA to enforce such judgment for the aforesaid in rem indebtedness and to foreclose or otherwise enforce the liens of NDPCA in and to the Settlement Property.

BILLY GENE DOOLIN, WALLACE J. DOOLIN AND MARK LEE DOOLIN

By: 
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Of the Firm:

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P. O. Box 1404
Sapulpa, OK 74067-1404
Telephone: (918) 224-5357

-and-

By: 

Stephen H. Foster

P. O. Box 815
Bristow, OK 74010
Telephone: (918) 367-3376

ATTORNEYS FOR DEFENDANTS BILLY GENE DOOLIN, WALLACE J. DOOLIN AND MARK LEE DOOLIN

VIRGINIA E. DOOLIN, NOW ORR, SARA E. DOOLIN, NOW CANFIELD, AND SUSAN L. DOOLIN

By: John Young
John M. Young

Of the Firm:

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P. O. Box 1364
Sapulpa, OK 74067
Telephone: (918) 224-3131

ATTORNEYS FOR VIRGINIA E. DOOLIN, NOW ORR, SARA E. DOOLIN, NOW CANFIELD, AND SUSAN L. DOOLIN

14/Doolin.SFJ

IN THE U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
AUG 14 1990
Jack C. Silver, Clerk
U.S. DISTRICT COURT

KELLY OIL & GAS CO., INC.,

Plaintiff,

vs.

COSSACK ENERGY GROUP LTD., ET AL.

Defendants.

CASE NO. 89-C-625B

AMENDED ORDER OF DISMISSAL

ON the 3rd day of August, 1990, plaintiff filed herein its Motion for Dismissal Without Prejudice and on the 6th day of August, 1990, the Court granted said Motion, however, the caption of the Order so granted stated it was "with prejudice." This was in error.

IT IS HEREBY ORDERED that this case is dismissed without prejudice and the Order of the 6th day of August, 1990, is so amended.

DATED this 14th day of August, 1990.

UNITED STATES DISTRICT JUDGE

Thornton and Thornton,
a Professional Corporation
David M. Thornton, O.B.A. 8999
525 South Main, Suite 660
Tulsa, Oklahoma 74103
Telephone: (918) 587-2544
Fax No.: (918) 582-0551

53

CERTIFICATE OF MAILING

I, David M. Thornton, hereby do certify that on this _____ day of August, 1990, a true and correct copy of the foregoing instrument was mailed to Defendants, Dennis Lee, Cossack Energy Group Ltd., 4002 South 129th West Avenue, Sand Springs, Oklahoma 74063; and, Ronald and Carol Lee, Post Office Box 244, Shamrock, Oklahoma 74068, by depositing same in the U.S. Mail with proper postage thereon fully prepaid.

David M. Thornton

KELLY.COS\11

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. LARRY H. YOUNG; MARIANN L. YOUNG a/k/a MARI ANN L. YOUNG a/k/a MARI ANN YOUNG; BROKEN ARROW MEDICAL CENTER, INC. f/k/a FRANKLIN MEMORIAL HOSPITAL OF BROKEN ARROW, INC.; STATE OF OKLAHOMA ex rel. OKLAHOMA TAX COMMISSION; COUNTY TREASURER, Tulsa County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, Defendants.	)	CIVIL ACTION NO. 88-C-506-B

U.S. DISTRICT COURT

DEFICIENCY JUDGMENT

This matter comes on before the Court this 14th of August, 1990, on the Motion of the Plaintiff United States of America for leave to enter a Deficiency Judgment which Motion was filed on the 16th day of July, 1990, and a copy of the Motion was mailed to Larry H. Young, 134A Mills Road, Brunswick, Georgia 31520 and Mariann L. Young a/k/a Mari Ann L. Young a/k/a Mari Ann Young, P.O. Box 713, Owasso, Oklahoma 74055 and all counsel of record. The Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, appeared by Tony M. Graham, United States Attorney for the Northern District of Oklahoma through Nancy Nesbitt Blevins, Assistant United States Attorney, and the Defendants, Larry H. Young and Mariann L. Young a/k/a Mari Ann L. Young a/k/a Mari Ann Young, appeared neither in person nor by counsel.

The Court upon consideration of said Motion finds that the amount of the Judgment rendered herein on April 5, 1989, in favor of the Plaintiff United States of America, and against the Defendants, Larry H. Young and Mariann L. Young a/k/a Mari Ann L. Young a/k/a Mari Ann Young, with interest and costs to date of sale is $36,121.66.

The Court further finds that the appraised value of the real property at the time of sale was $9,700.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered April 5, 1989, for the sum of $8,589.00 which is less than the market value.

The Court further finds that the said Marshal's sale was confirmed pursuant to the Order of this Court on the 7th day of August, 1990.

The Court further finds that the Plaintiff, United States of America on behalf of the Secretary of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendants, Larry H. Young and Mariann L. Young a/k/a Mari Ann L. Young a/k/a Mari Ann Young, as follows:

Principal Balance as of 4/5/89	$27,536.01
Interest	6,638.14
Late Charges to Date of Judgment	329.84
Appraisal by Agency	425.00
Management Broker Fees to Date of Sale	715.90
Abstracting	200.00
Publication Fees of Notice of Sale	171.77
Appraisers' Fees	105.00
TOTAL	$36,121.66
Less Credit of Appraised Value	- 9,700.00
DEFICIENCY	$26,421.66

plus interest on said deficiency judgment at the legal rate of _____ percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Veterans Affairs have and recover from Defendants, Larry H. Young and Mariann L. Young a/k/a Mari Ann L. Young a/k/a Mari Ann Young, a deficiency judgment in the amount of $26,421.66, plus interest at the legal rate of 7.88 percent per annum on said deficiency judgment from date of judgment until paid.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

NNB/css

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

BAUCOM CONCRETE CONSTRUCTION, INC., an Oklahoma corporation,

Plaintiffs,

vs.

FLEMING BUILDING COMPANY, INCORPORATED, an Oklahoma corporation, et al.,

Defendants,

vs.

ELEVENTH AND MINGO DEVELOPMENT COMPANY, an Oklahoma general partnership, et al.,

Third Party Defendants.

FLEMING BUILDING COMPANY, INC., an Oklahoma corporation,

Plaintiff,

vs.

ELEVENTH AND MINGO DEVELOPMENT COMPANY, an Oklahoma corporation, et al.,

Defendants.

GASSER CONSTRUCTION COMPANY,

Plaintiff,

vs.

ELEVENTH AND MINGO DEVELOPMENT COMPANY; and FLEMING BUILDING COMPANY, INC.,

Defendants.

Case No. 89-C-1077-B

ORDER

Before me, the undersigned Judge, came on for hearing on the 14th day of Aug., 1990, the Application for Order Entering Summary Judgment of APAC-Oklahoma, Inc., d/b/a Standard Industries against Fleming Building Company, Incorporated.

After reviewing the Application and supporting Affidavit and the Court file, and after being apprised of the premises, and for good cause shown, the Court finds that APAC-Oklahoma, Inc., d/b/a Standard Industries, is entitled to summary judgment in its favor against Fleming Building Company, Incorporated.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that APAC-Oklahoma, Inc., d/b/a Standard Industries, is granted summary judgment in its favor against Fleming Building Company, Incorporated in the amount of $12,654.98, together with interest thereon.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that APAC-Oklahoma, Inc., d/b/a Standard Industries, is granted leave to file an application with this Court for costs and attorney's fees within fifteen (15) days of the entry of this Order pursuant to Rule 6 of the Local Rules for the U.S. District for the Northern District of Oklahoma.

S/ THOMAS R. BRETT

JUDGE THOMAS BRETT

GLA/ta
07/20/90

entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

IN RE: ASBESTOS LITIGATION) Master #1417
)
FILED ASB - TW # 4093

AUG 13 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CHARLES RAYMOND CHANEY, et al.,	)	No. 88-C-724-E
EARL MORRIS OLEMAN, et al.,	)	No. 88-C-744-B
GEORGE GRANT HELTON, et al.,	)	No. 88-C-745-E
CLINTON BERNICE DITMORE, et al.,	)	No. 88-C-751-E
SANFORD MARION BOWEN, JR., et al.,	)	No. 88-C-772-C
LARRY EUGENE STOGSDILL, et al.,	)	No. 88-C-715-E
PATRICK W. PERRY, et al.,	)	No. 88-C-719-E
JOE MONROE BERRY, et al.,	)	No. 88-C-784-C
BUDDY EUGENE JONES, et al.,	)	No. 88-C-790-C
MARVIN EUGENE BEEHLER, et al.,	)	No. 88-C-797-E
JUNIOR LEROY MASHBURN, et al.,	)	No. 88-C-798-B
LELAND WEBSTER KAHLER, et al.,	)	No. 88-C-807-B
BRENDA GAY ANDREWS, et al.,	)	No. 88-C-808-E
RICHARD WARD WARNER, et al.,	)	No. 88-C-814-E
MERVIN LEE EAST, et al.,	)	No. 88-C-824-E
RICHARD KEITH HUNT, et al.,	)	No. 88-C-843-B
G. D. KASTEN, et al.,	)	No. 88-C-836-B

STIPULATION AND ORDER DISMISSING
DEFENDANT SOUTHERN TALC COMPANY

NOTE: THIS ORDER IS TO BE MAILED BY MOVANT TO ALL PRO SE LITIGANTS IMMEDIATELY UPON RECEIPT.

W. D. HOPPER, et	No. 88-C-841-E
BOBBIE JOE HULSEY, et al.,	No. 88-C-848-C
JACK J. PHILLIPS, et al.,	No. 88-C-888-B
EVA F. McCOIN,	No. 88-C-890-E
VERNA BRADEN,	No. 88-C-905-B
CHARLES PAUL SILL, et al.,	No. 88-C-698-E
DONALD E. ELSTEN, et al.,	No. 88-C-705-E
HEDY MARIE MASTERSON,	No. 88-C-906-B
JOSEPH M. BRADY, et al.,	No. 88-C-937-B
ROY ALVIN EAST, et al.,	No. 88-C-941-C
TRELLA B. FISHER,	No. 88-C-944-E
WOODROW WILSON WEBBER,	No. 88-C-948-E
EUGENE WILLIAM STICH, et al.,	No. 88-C-950-B
ROBERT J. GANDY, et al.,	No. 88-C-960-C
WOODROW L. STANLEY, et al.,	No. 88-C-969-C
CHARLES WATTERSON, et al.,	No. 88-C-978-E
J. D. WARD, et al.,	No. 88-C-980-B
JEFF L. LOWE, et al.,	No. 88-C-994-B
EDWARD RANDOLPH WILBURN, et al.,	No. 88-C-1007-E
JAMES E. WESTERVELT, et al.,	No. 88-C-1008-C
DOYLE JOHNSON, et al.,	No. 88-C-1032-E

STIPULATION AND ORDER DISMISSING DEFENDANT SOUTHERN TALC COMPANY

BERTHA ROOK,	)	No. 88-C-1050-E
WILLIAM J. KELSO, et al.,	)	No. 88-C-1082-E
EARNEST DONALD GREEN, et al.,	)	No. 88-C-1113-E
NAOMI BLACK,	)	No. 88-C-1139-B
ROBERT L. BLAYDES, et al.,	)	No. 88-C-1201-B
	)	
JAMES ARTHUR McAFFREY, et al.,	)	No. 88-C-1272-B
LINDSEY RAY PATTON, et al.,	)	No. 88-C-1394-E
RESSIE MAE WALL,	)	No. 88-C-1410-C
	)	
NAYDEEN LaDUKE,	)	No. 89-C-162-B
	)	
JOHNNIE JUNIOR ENGLAND, et al.,	)	No. 88-C-709-C
HOWARD RICHARD GREEN, et al.,	)	No. 88-C-706-C
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
ANCHOR PACKING COMPANY, et al.,	)	
	)	
Defendants.	)	

STIPULATION AND ORDER DISMISSING
DEFENDANT SOUTHERN TALC COMPANY

COME NOW the Plaintiffs, through their attorney, and individual Defendant Southern Talc Company, through its attorney, and do hereby stipulate that the above cases are "settled and dismissed without prejudice as to Defendant Southern Talc Company only, each party to bear its own costs," and said actions are to remain pending against other named Defendants.

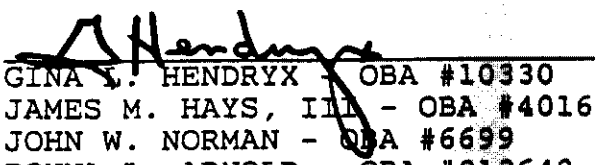
/s/
THOMAS R. BRETT, U.S. DISTRICT JUDGE

/s/ s/H. DALE COOK
H. DALE COOK, U.S. DISTRICT JUDGE

/s/
JAMES O. ELLISON, U.S. DISTRICT JUDGE

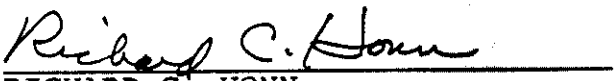
APPROVED:

NORMAN & EDEM
Attorneys for Plaintiffs

By: 

GINA L. HENDRYX - OBA #10330
JAMES M. HAYS, III - OBA #4016
JOHN W. NORMAN - OBA #6699
DONNA L. ARNOLD - OBA #013649
Renaissance Centre East
127 N.W. 10th
Oklahoma City, OK 73103-4903
405-272-0200 (O)
405-235-2949 (F)

ROGERS & HONN
Attorneys for Defendant
Southern Talc Company

By: 

RICHARD C. HONN
26 Oaks Office Park
2417 E. Skelly Drive
Tulsa, OK 74105
918-744-4499 (O)
918-742-6688 (F)

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

CARL WAYNE SISCO,)
)
Plaintiff,)
)
v.) 90-C-228-B
)
MIKE MITCHELL, et al,)
)
Defendants.)

ORDER

The Court has for consideration the Report and Recommendation of the United States Magistrate filed July 26, 1990 in which the Magistrate recommended that the Motion to Dismiss be granted and the case dismissed.

No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the United States Magistrate should be and hereby is adopted and affirmed.

It is, therefore, Ordered that the Motion to Dismiss is granted and the case is dismissed.

Dated this 13 day of August, 1990.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

10

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KATHERINE E. TABB, a/k/a KATHERINE E. TABBS; TALLANT RENTAL PROPERTIES, INC., f/k/a TALLANT DEVELOPMENT CORPORATION, an Oklahoma Corporation, a/k/a TALLANT DEVELOPMENT, INC., an Oklahoma Corporation; NOR-COM ENTERPRISES, f/k/a NOR-COM INVESTMENTS, an Oklahoma Limited Partnership, a/k/a NOR-COM INVESTMENTS, an Oklahoma Limited Partnership, Don J. Guy, General Partner; E. W. FISHER III; CIMARRON FEDERAL SAVINGS AND LOAN ASSOCIATION, Successor in Interest to Phoenix Federal Savings and Loan Association; FRANKLIN AND UNDERWOOD PROPERTIES, an Oklahoma General Partnership; COUNTY TREASURER, Tulsa County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma,

Defendants.

FILED

AUG 13 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 89-C-135-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 10 day of Aug, 1990. The Plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney; the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, appear by J. Dennis Semler, Assistant District

NOTE: THIS ORDER IS TO BE MAILED BY MOVANT TO ALL COUNSEL AND PRO SE LITIGANTS IMMEDIATELY UPON RECEIPT.

Attorney, Tulsa County, Oklahoma; the Defendant, Katherine E. Tabb, a/k/a Katherine E. Tabbs, appears not, having previously filed her Disclaimer; that the Defendant, Cimarron Federal Savings and Loan Association, Successor in Interest to Phoenix Federal Savings and Loan Association, appears by its attorney James A. Slayton; and the Defendants, Tallant Rental Properties, Inc., f/k/a Tallant Development Corporation, an Oklahoma Corporation, a/k/a Tallant Development, Inc., an Oklahoma Corporation, Nor-Com Enterprises, f/k/a Nor-Com Investments, an Oklahoma Limited Partnership, a/k/a Nor-Com Investments, an Oklahoma Limited Partnership, Don J. Guy, General Partner, E. W. Fisher III, and Franklin and Underwood Properties, an Oklahoma General Partnership, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendant, Katherine E. Tabb, a/k/a Katherine E. Tabbs, acknowledged receipt of Summons and Complaint on March 8, 1989; that Defendant, Nor-Com Enterprises, f/k/a Nor-Com Investments, an Oklahoma Limited Partnership, a/k/a Nor-Com Investments, an Oklahoma Limited Partnership, Don J. Guy, General Partner, was served with Summons and Complaint on May 15, 1989; that Defendant, E. W. Fisher III, acknowledged receipt of Summons and Complaint on or about March 1, 1989; that Defendant, Cimarron Federal Savings and Loan Association, Successor in Interest to Phoenix Federal Savings and Loan Association, acknowledged receipt of Summons and Complaint on March 9, 1989; that Defendant, Franklin and Underwood Properties, an Oklahoma General Partnership, was served with Summons and Complaint on

April 6, 1989; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on February 24, 1989; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on February 24, 1989.

The Court further finds that the Defendant, Tallant Rental Properties, Inc., f/k/a Tallant Development Corporation, an Oklahoma Corporation, a/k/a Tallant Development, Inc., an Oklahoma Corporation, was served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning February 23, 1990, and continuing to March 30, 1990, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(C)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendant, Tallant Rental Properties, Inc., f/k/a Tallant Development Corporation, an Oklahoma Corporation, a/k/a Tallant Development, Inc., an Oklahoma Corporation, and service cannot be made upon said Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendant without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known address of the Defendant, Tallant Rental Properties, Inc., f/k/a Tallant

Development Corporation, an Oklahoma Corporation, a/k/a Tallant Development, Inc., an Oklahoma Corporation. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the party served by publication with respect to its present or last known place of residence and/or mailing address. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to the subject matter and the Defendant served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on March 16, 1989; that the Defendant, Katherine E. Tabb, a/k/a Katherine E. Tabbs, filed her Consent to Judgment and Disclaimer on March 13, 1989; that the Defendant, Cimarron Federal Savings and Loan Association, Successor in Interest to Phoenix Federal Savings and Loan, filed its Answer on March 10, 1989; and that the Defendants, Tallant Rental Properties, Inc., f/k/a Tallant Development Corporation, an Oklahoma Corporation, a/k/a Tallant Development, Inc., an Oklahoma Corporation, Nor-Com Enterprises, f/k/a Nor-Com

Investments, an Oklahoma Limited Partnership, a/k/a Nor-Com Investments, an Oklahoma Limited Partnership, Don J. Guy, General Partner, E. W. Fisher III, and Franklin and Underwood Properties, an Oklahoma General Partnership, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on November 30, 1987, Donald J. Guy d/b/a Nor-Com Investments, filed his voluntary petition in bankruptcy in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 87-03339-C. On February 3, 1989, the United States Bankruptcy Court for the Northern District of Oklahoma entered its order modifying the automatic stay afforded the debtor by 11 U.S.C. § 362 and directing abandonment of the real property subject to this foreclosure action and which is described below.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

> Lot Fifteen (15), Block Forty (40), VALLEY VIEW ACRES SECOND ADDITION to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

The Court further finds that on June 24, 1971, Katherine E. Tabb, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, her mortgage note in the amount of $6,200.00, payable in monthly installments, with interest thereon at the rate of 7.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, Katherine E. Tabb executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated June 24, 1971, covering the above-described property. Said mortgage was recorded on June 29, 1971, in Book 3974, Page 615, in the records of Tulsa County, Oklahoma.

The Court further finds that Defendant, Katherine E. Tabb, a/k/a Katherine E. Tabbs, made default under the terms of the aforesaid note and mortgage by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof Defendant, Katherine E. Tabb, a/k/a Katherine E. Tabbs is indebted to the Plaintiff in the principal sum of $4,539.60, plus interest at the rate of 7.5 percent per annum from August 1, 1987 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, Cimarron Federal Savings and Loan Association, Successor in Interest to Phoenix Federal Savings and Loan Association, has liens on the property which is the subject matter of this action by virtue of an Assignment of Mortgage dated September 27, 1982, and recorded on September 27, 1982, in Book 4640, Page 728 in the records of Tulsa County, Oklahoma; by virtue of a Mortgage dated February 23, 1984, and recorded on March 2, 1984, in Book 4771, Page 154 in the records of Tulsa County, Oklahoma; by virtue of a

Financing Statement recorded on March 27, 1984, in Book 4777, Page 891 in the records of Tulsa County, Oklahoma; and by virtue of a Notice of Pendency of Action dated November 15, 1985, and recorded on November 15, 1985, in Book 4906, Page 1025 in the records of Tulsa County, Oklahoma. These liens are in the amount of $ -0-, plus interest at the rate of -0- percent per annum from the date of judgment, plus costs of this action.

The Court further finds that the Defendants, Tallant Rental Properties, Inc., f/k/a Tallant Development Corporation, an Oklahoma Corporation, a/k/a Tallant Development, Inc., an Oklahoma Corporation, Nor-Com Enterprises, f/k/a Nor-Com Investments, an Oklahoma Limited Partnership, a/k/a Nor-Com Investments, an Oklahoma Limited Partnership, Don J. Guy, General Partner, E. W. Fisher III, and Franklin and Underwood Properties, an Oklahoma General Partnership, are in default, and have no right, title or interest in the subject real property.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Katherine E. Tabb, a/k/a Katherine E. Tabbs, in the principal sum of $4,539.60, plus interest at the rate of 7.5 percent per annum from August 1, 1987 until judgment, plus interest thereafter at the current legal rate of 7.88 percent per annum until paid, plus the costs of this action accrued and accruing, plus any

additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Cimarron Federal Savings and Loan Association, Successor in Interest to Phoenix Federal Savings and Loan Association, have and recover judgment in the amount of $ —0—, plus interest at the rate of _____ percent per annum from the date of judgment, plus costs of this action, by virtue of an Assignment of Mortgage dated September 27, 1982, and recorded on September 27, 1982, in Book 4640, Page 728 in the records of Tulsa County, Oklahoma; by virtue of a Mortgage dated February 23, 1984, and recorded on March 2, 1984, in Book 4771, Page 154 in the records of Tulsa County, Oklahoma; by virtue of a Financing Statement recorded on March 27, 1984, in Book 4777, Page 891 in the records of Tulsa County, Oklahoma; and by virtue of a Notice of Pendency of Action dated November 15, 1985, and recorded on November 15, 1985, in Book 4906, Page 1025 in the records of Tulsa County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Tallant Rental Properties, Inc., f/k/a Tallant Development Corporation, an Oklahoma Corporation, a/k/a Tallant Development, Inc., an Oklahoma Corporation, Nor-Com Enterprises, f/k/a Nor-Com Investments, an Oklahoma Limited Partnership, a/k/a Nor-Com Investments, an Oklahoma Limited Partnership, Don J. Guy, General Partner, E. W. Fisher III, Franklin and Underwood

Properties, an Oklahoma General Partnership, and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Katherine E. Tabb, a/k/a Katherine E. Tabbs, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of the Defendant, Cimarron Federal Savings and Loan Association, Successor in Interest to Phoenix Federal Savings and Loan Association, in the amount of $ -0-, plus interest at the rate of ____ percent per annum from the date of judgment.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

(Signed) H. Dale Cook
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney

NANCY NESBITT BLEVINS, OBA #6634
Assistant United States Attorney

JAMES A. SLAYTON, OBA #12168
Attorney for Defendant,
Cimarron Federal Savings and Loan Association,
Successor in Interest to Phoenix Federal
Savings and Loan Association

J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 89-C-135-C

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

IN RE:	)	Master # 1417
	)	
ASBESTOS LITIGATION	)	ASB (TW) No. 4094

CHARLES PAUL SILL, et al.,	)	No. 88-C-698-E
	)	
DONALD E. ELSTEN, et al.,	)	No. 88-C-705-E
LARRY EUGENE STOGSDILL, et al.,	)	No. 88-C-715-E
	)	
PATRICK W. PERRY, et al.,	)	No. 88-C-719-E
CHARLES RAYMOND CHANEY, et al.,	)	No. 88-C-724-E
	)	
EARL MORRIS OLEMAN, et al.,	)	No. 88-C-744-B
	)	
GEORGE GRANT HELTON, et al.,	)	No. 88-C-745-E
	)	
CLINTON BERNICE DITMORE, et al.,	)	No. 88-C-751-E
	)	
SANFORD M. BOWEN, JR., et al.,	)	No. 88-C-772-C
JOE MONROE BERRY, et al.,	)	No. 88-C-784-C
	)	
BUDDY EUGENE JONES, et al.,	)	No. 88-C-790-C
	)	
MARVIN EUGENE BEEHLER, et al.,	)	No. 88-C-797-E
	)	
JUNIOR LEROY MASHBURN, et al.,	)	No. 88-C-798-B
	)	
LELAND WEBSTER KAHLER, et al.,	)	No. 88-C-807-B
BRENDA GAY ANDREWS, et al.,	)	No. 88-C-808-E
	)	
RICHARD WARD WARNER, et al.,	)	No. 88-C-814-E
	)	
MERVIN LEE EAST, et al.,	)	No. 88-C-824-E

FILED

AUG 13 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

STIPULATION AND ORDER
DISMISSING DEFENDANT,
FLINTKOTE COMPANY
(TIREWORKER)

GEORGE DAVID KASTEN,	)	No. 88-C-836-B
	)	
RICHARD KEITH HUNT, et al.,	)	No. 88-C-843-B
W. D. HOPPER, et al.,	)	No. 88-C-841-E
	)	
BOBBY J. HULSEY, et al.	)	No. 88-C-848-C
	)	
JACK J. PHILLIPS, et al.,	)	No. 88-C-888-B
	)	
JOHN BARNEY McCOIN, et al.,	)	No. 88-C-890-E
	)	
VERNA BRADEN,	)	No. 88-C-905-B
HEDY MARIE MASTERSON,	)	No. 88-C-906-B
JOSEPH M. BRADY, et al.,	)	No. 88-C-937-B
	)	
ROY ALVIN EAST, et al.,	)	No. 88-C-941-C
	)	
TRELLA B. FISHER,	)	No. 88-C-944-E
WOODROW WILSON WEBBER, et al.,	)	No. 88-C-948-E
	)	
EUGENE W. STICH, et al.,	)	No. 88-C-950-B
	)	
ROBERT J. GANDY, et al.,	)	No. 88-C-960-C
	)	
WOODROW L. STANLEY, et al.,	)	No. 88-C-969-C
	)	
CHARLES WATTERSON, et al.,	)	No. 88-C-978-E
J.D. WARD, et al.,	)	No. 88-C-980-B
	)	
JEFF L. LOWE, et al.,	)	No. 88-C-994-B
	)	
EDWARD RANDOLPH WILBURN, et al.,	)	No. 88-C-1007-E
	)	
JAMES E. WESTERVELT, et al.,	)	No. 88-C-1008-C
	)	
DOYLE JOHNSON, et al.,	)	No. 88-C-1032-E
CLARENCE L. ROOK, et al.,	)	No. 88-C-1050-E
	)	
WILLIAM J. KELSO, et al.,	)	No. 88-C-1082-E
	)	
EARNEST D. GREEN, et al.,	)	No. 88-C-1113-E
	)	

NAOMI BLACK,	)	No. 88-C-1139-B
	)	
ROBERT L. BLAYDES, et al.,	)	No. 88-C-1201-B
JAMES ARTHUR McAFFREY, et al.,	)	No. 88-C-1272-B
	)	
LINDSEY RAY PATTON, et al.,	)	No. 88-C-1394-E
	)	
RESSIE M. WALL, et al.,	)	No. 88-C-1410-C
	)	
NAYDEEN LADUKE,	)	No. 89-C-162-B
	)	
Plaintiffs,	)	
vs.		
ANCHOR PACKING COMPANY, et al.,	)	
	)	
Defendants.	)	

STIPULATION AND ORDER DISMISSING
DEFENDANT, FLINTKOTE COMPANY
(TIREWORKER)

COME NOW Plaintiffs, through their attorney, and individual Defendant Flintkote Company, through its attorney, and do hereby stipulate that the above cases are "settled and dismissed without prejudice as to Defendant, Flintkote Company only, each party to bear its own costs," and said actions are to remain pending against other named Defendants.

IT IS SO ORDERED.

/s/
THOMAS R. BRETT
UNITED STATES DISTRICT COURT JUDGE

/s/
H. DALE COOK
UNITED STATES DISTRICT COURT JUDGE

/s/
JAMES O. ELLISON
UNITED STATES DISTRICT COURT JUDGE

APPROVED:

Attorney for Plaintiffs

Attorney for Defendant, Flintkote Company

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 13 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

FEDERAL SAVINGS & LOAN INSURANCE CORPORATION,

Plaintiff,

vs.

FIRST SECURITY MORTGAGE COMPANY,

Defendant.

No. 89-C-655-E

ADMINISTRATIVE CLOSING ORDER

The Defendant First Security Mortgage Company having filed its petition in bankruptcy and these proceedings being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

If, within thirty (30) days of a final adjudication of the bankruptcy proceedings the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

ORDERED this 10TH day of August, 1990.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

AUG 10 1990

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

NELLIE LOU LILLIE,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 89-C-632-B
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

J U D G M E N T

In keeping with the Findings of Fact and Conclusions of Law filed contemporaneous herewith, Judgment is hereby entered in favor of the Defendant, United States of America, and against the Plaintiff, Nellie Lou Lillie, the Plaintiff's action is hereby dismissed, and costs are assessed against the Plaintiff if timely applied for pursuant to Local Rule 6. The parties are to pay their own respective attorneys fees.

DATED this 10th day of August, 1990.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

32

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

AUG 10 1990

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

DENNIS A. SKINNER,

Plaintiff,

vs.

TOTAL PETROLEUM, INC.,

Defendant.

No. 82-C-1118-C

JUDGMENT

This matter came before the Court for non-jury trial. The issues having been considered and a decision having been duly rendered as set forth in the Findings of Fact and Conclusions of Law, filed simultaneously herein,

IT IS ORDERED, ADJUDGED AND DECREED that judgment is rendered in favor of plaintiff Dennis A. Skinner and against defendant Total Petroleum, Inc. Plaintiff is awarded backpay in the total sum of $64,499.02, reinstatement to his former position as station manager, along with attorney fees and cost of this action.

IT IS SO ORDERED this 9th day of August, 1990.

H. DALE COOK
Chief Judge, U. S. District Court

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DENNIS A. SKINNER,

Plaintiff,

vs.

TOTAL PETROLEUM, INC.,

Defendant.

No. 82-C-1118-C

FINDINGS OF FACT
and
CONCLUSIONS OF LAW

This matter came before the Court on remand from the Tenth Circuit Court of Appeals.[1] Following remand, plaintiff voluntarily dismissed his claim under 42 U.S.C. §1981. His remaining claim brought pursuant to Title VII of the Civil Rights Act of 1964 was retried before the Court on April 9 and 10, 1990.

Plaintiff, a white male, alleges that defendant Total Petroleum, Inc. discharged him in retaliation for supporting and assisting a black former co-worker, Fritz Damberville, in his efforts of filing a claim of race discrimination with the Equal Employment Opportunity Commission (EEOC).

Defendant denies plaintiff was discharged for retaliatory reasons, and affirmatively asserts plaintiff was terminated for leaving money locked in a station safe rather than depositing it in a nearby bank, as allegedly required by company policy.

---

[1] *Mandate issued October 14, 1988, Case No. 85-2807 and 85-2825.*

From a review of the parties' briefs, trial testimony and exhibits, the Court enters the following findings and conclusions.

FINDINGS OF FACT

Jurisdiction and Venue

1. On November 3, 1981 plaintiff filed an administrative charge against the defendant Total Petroleum, Inc. with the EEOC. This charge was filed within 234 days of the acts complained of herein.

2. On August 30, 1982, the EEOC issued plaintiff a Notice of Right to Sue. This action was commenced on November 23, 1982.

3. Defendant at all times pertinent to this action has been engaged in an industry affecting interstate commerce. Defendant employed more than fifteen (15) persons a day in each of twenty or more calendar weeks in the winter of 1980-1981 or for the preceding year.

4. The acts complained of in this action took place in Tulsa, Oklahoma within this judicial district.

Background

5. Plaintiff was hired by Vickers Petroleum, Inc., in February, 1980. He commenced work as a cashier. Within a few months, and after several location transfers, he was promoted to manager of the 51st and Harvard station. In May of 1980, plaintiff was transferred to the 11th Street station as its manager. This was the highest sales volume service station owned by Vickers in the Tulsa area. Plaintiff was transferred to improve operations. Plaintiff reduced the payroll from seventeen to thirteen employees,

commenced employee training programs, and worked extra hours without compensation.

6. In January, 1981, Vickers Petroleum, Inc. merged with Total Petroleum, Inc. Total assumed operations of all service stations, including the one managed by plaintiff.

7. Richard Craig, a white male, was employed by defendant as the Tulsa Area Supervisor and was plaintiff's immediate superior.

8. Bill Nelson, a white male, was employed by defendant as District Manager and was Richard Craig's direct superior.

9. Richard Craig considered plaintiff to be one of his best and most responsible station managers.

10. In mid-January, 1981, Bill Nelson and Richard Craig formally met with all Tulsa area station managers, including plaintiff, to discuss policies and procedures expected by the new owners, Total Petroleum. At the close of this meeting Bill Nelson made the comment the was happy that he did not see any "dark colored people" at the meeting because they had "screwed things up in Memphis".

11. Fritz Damberville was employed by defendant as assistant manager of the 11th Street station.

12. There were three work shifts: 6:00 a.m. until 3:00 p.m., 3:00 p.m. until 11:00 p.m., and 11:00 p.m. until 7:00 a.m. Customarily the station manager worked the first shift to permit the manager to be present during high volume traffic, and to receive sales calls.

13. Due to family constraints, Damberville was unable to work the night shift, which was customary for assistant managers.

Plaintiff, a bachelor, willingly agreed to make accommodations for Damberville. Accordingly, Damberville worked the day shift and plaintiff worked the night shift. Plaintiff performed all the required managerial responsibilities. No problems at the station resulted from this arrangement. However, Richard Craig did not approve of it. In mid-February, 1981, Richard Craig expressed to plaintiff that he should work the day shift so that plaintiff would be more "visible" to company officials headquartered in Memphis when they visited the Tulsa stations.

14. Plaintiff was unwilling to make the shift changes but agreed to be at the station during the day when Memphis officials were in Tulsa.

15. On two more occasions the same week, Craig requested that plaintiff work the day shift. Because of plaintiff's unwillingness, Craig transferred Damberville to another station for two days. Damberville was unhappy about the transfer because he was told by the new station that extra help was not needed.

16. Approximately one week later, without explanation, Craig told plaintiff that he could fire Damberville if he wished.

17. In mid-February, 1981, Craig transferred Jack Hathcock to the 11th Street station for plaintiff to train as a manager.

18. Jack Hathcock worked the night shift with plaintiff who helped him learn the paper work and procedures for being a manager.

19. In late February, 1981, plaintiff went on a one-week vacation. He placed Damberville in charge, with Hathcock as assistant manager. Plaintiff felt that Hathcock was adequately familiar with managerial responsibilities and told Damberville that

if an emergency arose, he was to give the station keys to Hathcock. During plaintiff's absence, Damberville became ill.[2] Damberville called Richard Craig's residence and, when informed Craig wasn't at home, left the station keys with Hathcock and went to the hospital.

20. Plaintiff was on vacation at the time Damberville was terminated from his position as assistant manager. Upon plaintiff's return he was informed that Damberville was terminated allegedly for violating company policy regarding the security of station keys.[3]

21. Plaintiff protested Damberville's termination asserting that the alleged violation by Damberville did not warrant termination and because he had specifically instructed Damberville to give the keys to Hathcock in an emergency situation, and Damberville was merely following plaintiff's directives.

22. Plaintiff discussed the termination with Richard Craig. Craig refused to reconsider the termination.

23. Plaintiff requested to speak with Bill Nelson concerning Damberville's termination during the following week but was told Bill Nelson was "a very busy man". However, Bill Nelson testified at trial that he had a policy of making himself available to talk to station managers upon their request.

24. After Bill Nelson failed to meet plaintiff at his first requested meeting, plaintiff informed Craig that if Nelson would not speak to him about Damberville's termination by the end of the

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[2]*Damberville developed a kidney stone, requiring immediate hospitalization.*

[3]*Richard Craig testified that Damberville should have taken the keys with him rather than leaving them with Hathcock.*

week, he would provide Damberville a statement concerning his job duties, which Damberville intended to give to the EEOC.

25. Plaintiff made a second effort to meet with Bill Nelson, but Nelson did not make himself available.

26. On Thursday, March 12, 1981, Richard Craig told plaintiff that the Damberville case "was closed", and that he was not showing "good company loyalty" by pressing the matter. Craig also advised plaintiff that there was an opening in Oklahoma City as a district supervisor and asked plaintiff if it would be convenient for him to pack up and move to Oklahoma City. Plaintiff responded that it would be inconvenient for him to move and once again asserted his belief that Damberville was a good employee. Plaintiff told Craig that Damberville's only problem with the Company was in adding and subtracting negative numbers. Craig responded indicating Damberville's only problem "was his negative color".

27. The next day, Friday, March 13, 1981, plaintiff wrote a statement on behalf of Damberville. In the statement, plaintiff represented that Damberville had "an excellent work record" and that he "performed exceptionally well". Plaintiff stated that he had previously broken the same company policy for which Damberville allegedly was terminated but the company had not fired him.

28. Plaintiff requested and was granted leave for a second vacation the following week.[4] He was told to leave the keys with a relief manager, Debbie Wiley. She took the keys from plaintiff about 1:30 Friday afternoon.

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[4]*This vacation was approved by Richard Craig to be taken without pay.*

29. When Wiley came to work Saturday morning, March 14, she discovered that plaintiff had failed to deposit the receipts taken during the night shift of Thursday, March 12-13, 1981, and the morning shift of Friday, March 13, 1981, as was company policy. She reported this fact to Richard Craig.

30. When plaintiff returned from his vacation and reported to work Monday, March 23, 1981, he was informed that he had been terminated for the alleged purpose of failing to obey company policy regarding the making of timely bank deposits.

Liability of Total Petroleum, Inc.

31. Plaintiff tendered testimony that on prior occasions other station managers had inadvertently forgotten to make bank deposits at the close of a shift and were not terminated due to the delay in making the deposits.

32. There is no history of plaintiff violating company policy regarding making deposits which would justify this harsh result. To the contrary the testimony established that plaintiff was a responsible, competent station manager.

33. The Court finds and concludes that Richard Craig and Bill Nelson's termination of Damberville was racially motivated. This conclusion is supported by their racially derogatory comments and their concern that "Memphis officials" would see a black employee working during a shift customarily reserved for managers.

34. Plaintiff's termination was the result of plaintiff's protesting the firing of Damberville and in retaliation for plaintiff's support of Damberville as an employee and his announced intent to assist Damberville with his EEOC claim of racial

discrimination against defendant. The Court finds that defendant's purported justification for dismissing plaintiff is pretextual in light of the countervailing evidence of prior acts of another employee consisting of similar "misconduct", and in light of defendant's admission that plaintiff was one of the best managers employed by defendant and was therefore kept in charge of defendant's highest volume service station in the Tulsa area. The Court also takes notice of the rapid sequence of events prior to plaintiff's termination. Plaintiff reiterated his intent to assist Damberville immediately prior to defendant's decision to terminate plaintiff.

35. At the time of his termination from Total, plaintiff was earning $4.62 per hour with a regular work week of 54 hours. Plaintiff was paid $6.93 per hour for hours worked in excess of 40 per week and was eligible for bonuses.

CONCLUSIONS OF LAW

A. Jurisdiction and Venue

1. All filing requirements of Title VII of the Civil Rights Act of 1964, as amended in 1972 (Title VII), have been satisfied by the plaintiff. 42 U.S.C. §2000e-5(e),(f)(1).

2. The defendant therein is an employer subject to the provisions of Title VII. 42 U.S.C. §2000e(b),(h).

3. Venue is proper in this Court. 42 U.S.C. §2000e-5(f)(3).

B. Title VII Claims

4. The defendant Total Petroleum, Inc., committed an unlawful employment practice prohibited by Title VII when it discharged plaintiff as a service station manager in retaliation

for plaintiff's supporting and assisting a former black employee of defendant in his charge of racial discrimination against defendant. 42 U.S.C. §2000e-3(a).

5. The test applied for determining whether a plaintiff has proved a prima facie case of retaliatory discharge under Title VII was set forth by the Tenth Circuit Court of Appeals in Burrus v. United Telephone Co. of Kansas, Inc., 683 F.2d 339, 343 (10th Cir. 1982), cert. denied, 459 U.S. 1071. A plaintiff must establish a prima facie case of retaliation by showing that: 1) he engaged in an activity protected by Title VII; 2) he was disadvantaged by an action of his employer subsequent to or contemporaneously with such activity; and 3) there is a causal connection between the protected activity and the adverse employment action. The causal connection may be demonstrated by evidence of circumstances that justify an inference of retaliatory motive, such as protected conduct closely followed by adverse action. Id. at 343.

6. As set forth by Burrus, supra, the allocation of burdens and order of presentation of proof in a Title VII retaliatory discharge suit is as follows: First, the plaintiff must establish the prima facie case set out above. Second, if the prima facie case is established, the burden of production shifts to the defendant to articulate a legitimate, nondiscriminatory reason for the adverse action. The defendant need not prove the absence of retaliatory motive, but must only produce evidence that would dispel the inference of retaliation by establishing the existence of a legitimate reason. Third, if evidence of a good faith reason is produced, the plaintiff may still prevail if he demonstrates the

articulated reason was a mere pretext for discrimination. The overall burden of persuasion remains on the plaintiff. Once evidence is presented by both parties tending to prove the existence of a legitimate reason on the one hand and pretext on the other, the Court must then decide the ultimate fact issue -- "which party's explanation of the employer's motivation it believes". United States Postal Service Board of Governors v. Aikins, 460 U.S. 711 (1983); Love v. Re/Max of America, Inc., 738 F.2d 383 (10th Cir. 1984).

The ultimate burden may be met in one of two ways. First, a plaintiff may persuade the Court that the employment decision more likely than not was motivated by the plaintiff's engaging in protected Title VII activity. In addition, however, the burden is also carried if the plaintiff shows "that the employer's proffered explanation is unworthy of credence". United States Postal Service Board of Governors v. Aikins, supra (Blackmun concurring), quoting Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 256 (1981) (citing McDonnell Douglas Corp. v. Green, 411 U.S. at 804-5 (1973)).

7. The Court finds that plaintiff is entitled to recover under the "participation" clause of 42 U.S.C. §2000e-3(a).

> It shall be an unlawful employment practice for an employer to discriminate against any of his employees ... because [the employer] has opposed any practice made an unlawful employment practice by this title, or because he has made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

Plaintiff's Prima Facie Case

8. The Court finds that plaintiff communicated his intent to assist Damberville with Damberville's claim of racial

discrimination against defendant and was dismissed from defendant's employ, immediately thereafter, in retaliation. The intent to assist a fellow employee in the latter's EEOC claim of employment discrimination under Title VII is protected under 42 U.S.C. §2000e3(a). An employer may not retaliate against an employee who, in good faith, communicates his intent to assist in an EEOC Title VII investigation. See Jefferies v. Harris County Community Action Association, 615 F.2d 1025, 1035 (5th Cir. 1980); Gifford v. Atchison, Topeka & Santa Fe Railway Co., 549 F.Supp. 1, 7 (C.D.Cal. 1980); Croushorn v. Board of Trustees, 518 F.Supp. 9, 21-24 (M.D.Tenn. 1980).

Plaintiff's Burden of Persuasion

9. The Court finds that the reasons articulated by defendant for plaintiff's dismissal are pretextual. Plaintiff has met its overall burden of persuasion by demonstrating that the articulated reason was a mere pretext for conduct prohibited by Title VII.

10. The Court finds that plaintiff, having established its prima facie case and having met the overall burden of persuasion, is entitled to recover against defendant for the latter's violation of plaintiff's statutory rights under 42 U.S.C. 2000e-3(a). Employers do not have free rein to punish employees who reveal their intent to assist the EEOC in a Title VII investigation. Retaliation directed at those who discreetly reveal their intent to complain to the EEOC or aid others in doing so would have as great a chilling effect upon the rights protected by Title VII as that caused by a reprisal against an employee who has already filed a charge. The Court's conclusion is supported by the statutory

language of the "participation" clause of 42 U.S.C. 2000e3(a). Forming the intent to do an act clearly "assists" the performance of that act, the intent to assist in an EEOC investigation, gives life to the act of doing so. Croushorn, 518 F.Supp. at 23-4.

C. Title VII Remedies

11. A request for backpay is not a claim for damages, but is an integral part of the equitable remedy of injunctive reinstatement. Reinstatement involves a return of the plaintiff to the position held before the alleged unconstitutional discharge. An inextricable part of the restoration to prior status is the payment of back wages properly owing to the plaintiff, diminished by earnings in the interim. Powell v. Pennsylvania Housing Finance Agency, 563 F.Supp. 419, 422 (M.D.Pa. 1983).

12. Plaintiff found new employment in various jobs beginning May 15, 1981. In 1981 and 1982 plaintiff earned $14,348.78. In 1984 plaintiff earned $6,692.61. From 1985 until 1989 plaintiff earned $70,505.90 working for Skaggs Alpha Beta, where he is currently employed as a front end manager. These earnings total $108,866.98.

13. At trial Bill Nelson testified that it was reasonable to assume that if plaintiff had remained employed by defendant the would have earned an average increase in salary of five percent (5%) a year. This would have been a total gross earnings from May 1981 until 1989 of $158,770.00. Plaintiff also presented evidence of bonuses received by defendant's employees in a same or similar situation from 1981 through 1989 in the sum of $14,596.

14. Plaintiff offered evidence of hospital, disability and life insurance benefits available for the years 1981, 1982, 1983 and 1984 for defendant's employees. However, cost of insurance is not a proper item of damages where the victim of discriminatory retaliation does not secure alternative coverage.[5] See Kossman v. Calumet County, 800 F.2d 697 (7th Cir. 1986), cert. denied, 479 U.S. 1088, reversed on other grounds, in Coston v. Plitt Theatre, 860 F.2d 834 (7th Cir. 1988). The primary goal of the backpay award is to make a victim whole. Permitting a cost of health insurance coverage in a backpay award when alternative coverage was not secured would allow the victim to recover an unwarranted windfall unless it is demonstrated that the victim was unable to secure coverage and had incurred a medical expense. There was no evidence offered at trial that plaintiff incurred expenses in securing alternative insurance coverage or incurred medical expenses that would have been covered under defendant's insurance program had plaintiff not been terminated in order that plaintiff might recover the cost of the insurance benefits or be reimbursed for any medical expenses incurred. Id. 800 F.2d at 704.[6]

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[5]*Fringe benefits such as vacation pay and sick pay are among the items which should be included in backpay. See Pettway v. American Cast Iron Pipe Company, 494 F.2d 211 (5th Cir. 1974) cert. denied, 439 U.S. 1115. Recoverable fringe benefits include all benefits that could be turned into cash by an employee, including retirement benefits. See Crabtree v. Baptist Hospital, 749 F.2d 1501, 1502 (11th Cir. 1985).*

[6]*Plaintiff relies on U. S. v. Lee Way Motor Freight, Inc., 625 F.2d 918 (10th Cir. 1979) for authority to recover the loss of hospital, disability and life insurance benefits. However, the language contained in Lee Way Motor does not provide any guidance under the facts of this case. Title VII provides for a "make whole" remedy. In order to make a plaintiff "whole" for a wrongful discharge, plaintiff is entitled to recover any sum that would have been paid directly to him in compensation or benefit (see footnote 3 supra), and any damages proven resulting from a denial of any benefit for which he would have received, but for the wrongful discharge.*

15. As a result of his termination from defendant's employment, plaintiff has suffered lost wages in the sum of $158,770 and lost bonuses in the sum of $14,596. Plaintiff had interim earnings in the sum of $108,866.98, thereby resulting in a total loss suffered in the sum of $64,499.02.[7]

16. The Court does not find credible the evidence offered as "prejudgment interest" and defined as the value of the loss use of plaintiff's gross income.

17. The Court further concludes that this is a proper case for awarding reinstatement to plaintiff's former status with defendant as a station manager.

D. Attorney Fees

18. The plaintiff herein, as the prevailing party, is entitled to the award of a reasonable attorney fee. 42 U.S.C. §2000e-5(k); 42 U.S.C. §2988. Hanrahan v. Hampton, 446 U.S. 754 (1980).

19. Absent an affidavit from plaintiff's attorney listing the factors enumerated in Waters v. Wisconsin Steel Works of Int'l. Harvester, 502 F.2d 1309, 1322 (7th Cir. 1974), cert. denied, 425 U.S. 997, the amount of the attorney fee cannot be determined. See also Comacho v. Colorado Technical College, 590 F.2d 887 (10th Cir. 1979); Love v. Mayor, City of Cheyenne, Wyoming, 620 F.2d 235 (10th Cir. 1980). State ex rel. Burk v. City of Oklahoma City, Oklahoma, 598 P.2d 659 (Okla. 1979). Plaintiff is hereby given twenty (20)

[7]*This sum is calculated by using gross income figures.*

days within which to submit proper documentation to the Court. Defendant is given 10 days thereafter in which to respond.

IT IS SO ORDERED this 9th day of August, 1990.

H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

GLEN SHEPPARD,

Plaintiff,

v.

CROWN MOTORS COMPANY,

Defendant.

89-C-428-C

FILED

AUG 9 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

The court has for consideration the Report and Recommendation of the Magistrate filed July 16, 1990, in which the Magistrate recommended that plaintiff's complaint be dismissed. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the court has concluded that the Report and Recommendation of the Magistrate should be and hereby is affirmed.

It is therefore Ordered that plaintiff's civil rights complaint pursuant to 42 U.S.C. § 1983 is dismissed pursuant to 28 U.S.C. § 1915(d).

Dated this 8th day of August, 1990.

H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

9

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

AUG 9 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

CIVIL NUMBER 90-C-458 E

RICHARD L. MORROW,
CSS 511 56 9291

Defendant,

DEFAULT JUDGMENT

A Default having been entered against the Defendant and counsel for the Plaintiff having requested Judgment against the defaulted Defendant and having filed a proper Affidavit, all in accordance with Rule 55(a) and (b)(1) of the Federal Rules of Civil Procedure and Rule 7 of the Rules of the District Court for the NORTHERN DISTRICT OF OKLAHOMA, now, therefore;

JUDGMENT is rendered in favor of the Plaintiff, United States of America, and against the Defendant, RICHARD L. MORROW, in the principal sum of $666.00, plus pre-judgment interest and administrative costs, if any, as provided by Section 3115 of Title 38, United States Code, together with service of process costs of $11.00. Future costs and interest at the legal rate of 7.88 %, will accrue from the entry date of this judgment and continue until this judgment is fully satisfied.

DATED this 9th day of August, 1990.

U.S. DISTRICT COURT CLERK
NORTHERN DISTRICT OF OKLAHOMA

By: D. Testerman
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 09 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

STANLEY JOHN O'BANION and LOUISE O'BANION,

Plaintiffs,

vs.

FIBREBOARD CORPORATION, et al.,

Defendants.

No. 88-C-92E

JUDGMENT

In accordance with the verdict of the jury herein, rendered on June 24, 1990, judgment is hereby entered in favor of the Defendants, Owens Corning Fiberglas, Inc. and Celotex Corporation, and against the Plaintiffs, Stanley John O'Banion and Louise O'Banion.

DATED this 8 day of ~~July~~ Aug 1990.

S/ JAMES O. ELLISON

JAMES O. ELLISON
U.S. DISTRICT JUDGE

NOTE: THIS ORDER IS TO BE MAILED BY MOVANT TO ALL COUNSEL AND PRO SE LITIGANTS IMMEDIATELY UPON RECEIPT.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OKLAHOMA

ELIZABETH DOLE, Secretary of Labor, United States Department of Labor,

Plaintiff,

v.

BURLESON PROPERTIES, INC., ARNOLD D. BURLESON and KATHERINE M. BURLESON,

Defendants.

Civil Action

No. 85-C-235-E

ORDER

The court has considered the Plaintiff's Motion to Dismiss Without Prejudice. After careful consideration of the statements made therein it is hereby

Ordered that this action for civil contempt be dismissed without prejudice.

Dated this 8 day of Aug, 1990.

S/ JAMES O. ELLISON

JAMES O. ELLISON
United States District Judge

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

AUG 9 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

CIVIL NUMBER 90-C-453 E

BILL J. CONDER JR.,
CSS 457 25 3299

Defendant,

DEFAULT JUDGMENT

A Default having been entered against the Defendant and counsel for the Plaintiff having requested Judgment against the defaulted Defendant and having filed a proper Affidavit, all in accordance with Rule 55(a) and (b)(1) of the Federal Rules of Civil Procedure and Rule 7 of the Rules of the District Court for the NORTHERN DISTRICT OF OKLAHOMA, now, therefore;

JUDGMENT is rendered in favor of the Plaintiff, United States of America, and against the Defendant, BILL J. CONDER JR., in the principal sum of $921.40, plus pre-judgment interest and administrative costs, if any, as provided by Section 3115 of Title 38, United States Code, together with service of process costs of $11.00. Future costs and interest at the legal rate of 7.88%, will accrue from the entry date of this judgment and continue until this judgment is fully satisfied.

DATED this 9th day of August, 1990.

U.S. DISTRICT COURT CLERK
NORTHERN DISTRICT OF OKLAHOMA

By: A Yesterwood
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 0 9 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

HOWARD CRAWFORD,
an individual,

Plaintiff,

vs.

THE CITY OF HOMINY, OKLAHOMA; DON CARNES, Police Chief of the City of Hominy; PAUL O'KEEFE, City Manager of the City of Hominy, Oklahoma; CANDICE LINVILLE; and OSAGE COUNTY, OKLAHOMA, in the name of the Board of County Commissioners of the County of Osage,

Defendants.

No. 90-C-0078-E

ORDER OF DISMISSAL WITH PREJUDICE

Pursuant to the Joint Stipulation of Dismissal filed by the Plaintiff and Defendants, the Court dismisses, with prejudice, Plaintiff's Complaint against the Defendants, City of Hominy, Oklahoma, Don Carnes, Paul O'Keefe, Candace Linville and Osage County, Oklahoma, with each party being responsible for their costs and attorney fees incurred herein.

Dated this 8th day of Aug., 1990.

James O. Ellison

JAMES O. ELLISON
United States District Judge

APPROVED AS TO FORM:

John B. Nicks

JOHN B. NICKS
Attorney for Howard Crawford

JON B. COMSTOCK
Attorney for City of Hominy,
Don Carnes, Paul O'Keefe, and
Candace Linville

JOHN S. BOGGS, JR. OBA #0920
Attorney for Osage County, OK

549.2.30/OML

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ROBERT ROBY,

Plaintiff,

v.

MICHAEL P. STONE, SECRETARY OF THE ARMY,

Defendant.

90-C-27-C

FILED

AUG 9 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

The court has for consideration the Report and Recommendation of the Magistrate filed July 20, 1990, in which the Magistrate recommended that defendant's Motion to Dismiss be granted. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the court has concluded that the Report and Recommendation of the Magistrate should be and hereby is affirmed.

It is therefore Ordered that defendant's Motion to Dismiss is granted.

Dated this 8 day of August, 1990.

H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

17

FILED

AUG 09 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

DOROTHY WILLIAMS)
)
Plaintiff,)
)
vs.) Case No. 88-C-518-E
)
STATE OF OKLAHOMA, ex. rel.,)
DEPARTMENT OF HUMAN SERVICES,)
)
Defendant.)

ORDER

Upon consideration of the Settlement Agreement entered into by the parties to this action, the Court finds that the terms thereof should be enforced as an order of the Court.

IT IS SO ORDERED.

JAMES O. ELLISON,
Judge of the District Court

APPROVED:

Rockne Porter
Attorney for the Plaintiff

David A. Brown
Attorney for Defendant

sbr/dcacon10

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA , for the use and benefit of DODSON & COCHRAN AIR CONDITIONING CO., INC.,

Plaintiff,

vs.

J.T. CONSTRUCTION CO., INC. and COMMERCIAL UNION INSURANCE COMPANY,

Defendants.

No. 89-C-260-E

FILED
SEP 1990
Jack C. Silver, Clerk
U.S. DISTRICT COURT

8-9-90

FILED
AUG 1990
Jack C. Silver, Clerk
U.S. DISTRICT COURT

JOURNAL ENTRY OF JUDGMENT

The Court having hereto on July 2, 1990, made a finding of fact that the Defendant is indebted to the Plaintiff for the sum of $12,901.54 for materials and labor furnished, **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** by the Court that the Plaintiff be awarded judgment against the Defendant for the sum of $12,901.54.

Dated this 8 day of ~~July~~ Aug 1990.

S/ JAMES O. ELLISON

JAMES O. ELLISON
United States District Judge
Judge for the Northern District of Oklahoma

APPROVED AS TO FORM:

Stephen B. Riley

STEPHEN B. RILEY
Attorney for Plaintiff

David H. Sanders

DAVID H. SANDERS
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

HOME-STAKE PRODUCTION COMPANY

Plaintiff,

v.

TALON PETROLEUM, C.A., et al.,

Defendants.

No. 86-1129-B

O R D E R

Pursuant to Judgment entered by the Circuit Court of Appeals for the Tenth Circuit under date of July 9, 1990, received and filed herein on August 2, 1990, this action against Defendants Hideca U.S.A., Inc., a Delaware corporation, Romichan Corporation, a Delaware corporation; Raul J. Valdes-Fauli, Trustee, L.W., Inc., a Delaware corporation, Laudmar, Inc., a Delaware corporation, Lunelco, Inc., a Delaware corporation, Venrest Investment Corporation, a Netherlands Antilles corporation and Karenwood International, N.V., a Netherlands Antilles corporation. is hereby dismissed and the Preliminary Injunction previously entered is vacated.

Plaintiff and dismissed parties are to pay their respective costs and attorneys' fees.

IT IS SO ORDERED this 8th day of August, 1990.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Copy

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA Plaintiff, vs. Ten Thousand Dollars ($10,000.00) In United States Currency and Real Property Known as Rural Route 3, Box 109-L, City of Sapulpa, Oklahoma, Creek County, State of Oklahoma, Defendant.	)	CIVIL ACTION NO. 89-C-208-E

STIPULATION OF DISMISSAL

Pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure the Plaintiff, United States of America, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Catherine J. Depew, Assistant United States Attorney, and the Claimant, James Charles Boone, hereby stipulate to dismissal against the Defendant, $10,000.00 in United States Currency, with prejudice, and without costs.

TONY M. GRAHAM
United States Attorney

Catherine J. Depew

CATHERINE J. DEPEW
Assistant United States Attorney
Attorney for UNITED STATES
OF AMERICA
3600 U.S. Courthouse
333 W. 4th Street
Tulsa, Oklahoma 74103
(918) 581-7463

James Robbins

JAMES ROBBINS
Attorney for Claimant
JAMES CHARLES BOONE
2800 South Hulen
Suite 200
Fort Worth, Texas 76109
(817) 924-2997

FILED

AUG -8 1990

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ALLSTATE FINANCE LEASING CORPORATION,

Plaintiff,

v.

5 STAR ENTERPRISES, INC., GLEN H. LAWRENCE and LOREN GUYER, CHIEF OF POLICE OF THE TOWN OF DRUMRIGHT,

Defendants.

Case No. 90-C 638 E

NOTICE OF DISMISSAL

TO: Loren Guyer, Chief of Police of the Town of Drumright, defendant and Doyle Watson, his attorney and all other defendants

Please take notice that the above-entitled action is hereby dismissed without prejudice, pursuant to Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure.

Dated this 7th day of August, 1990.

HANSON, HOLMES, FIELD & SNIDER

BY Richard K. Holmes

Richard K. Holmes OBA# 4327
5918 East 31st Street
Tulsa, Oklahoma 74135
(918) 627-4400
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
AUG 8 1990
Jack C. Silver, Clerk
U.S. DISTRICT COURT

MIDAMERICA FEDERAL SAVINGS AND LOAN ASSOCIATION, et al,

Plaintiff,

vs.

ROBERT LEE SHEPLER, et al,

Defendants.

Case No. 88-C-1340-B

ADMINISTRATIVE CLOSING ORDER

The Defendant having filed its petition in bankruptcy and these proceeding being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

IF, within 60 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 8 day of AUGUST, 1990.

UNITED STATES DISTRICT JUDGE
THOMAS R. BRETT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 07 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

NOCO INVESTMENT CO., INC., an Oklahoma corporation, and YALE AVENUE, LTD., an Oklahoma corporation,

Plaintiffs,

vs.

SUN REFINING AND MARKETING COMPANY, a Pennsylvania corporation, et al.,

Defendants,

ZGEN, INC. a/k/a BURKHART PETROLEUM CORPORATION,

Third Party Defendants.

Case No. 90-C-282-E

ORDER OF REMAND

COMES NOW the Plaintiffs' Application to have this matter remanded to the District Court of Tulsa County for the State of Oklahoma. The Court, being fully advised in the premises, finds that Plaintiffs' Application should be and is hereby granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the captioned matter be remanded to the District Court in and for Tulsa County, State of Oklahoma.

UNITED STATES DISTRICT COURT JUDGE

071970
B917003A.ORD
JBW:mb

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

AMERICAN INTERNATIONAL
Plaintiff(s),

vs. No. 89-C-482-C

TANDEM FINANCIAL CORP.
Defendant(s).

FILED
AUG 7 1990
Jack C. Silver, Clerk
U.S. DISTRICT COURT

JUDGMENT DISMISSING ACTION BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore, it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

Dated this 6th day of aug, 1990.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

EDDIE M. ABBOTT,)
)
Plaintiff,)
vs.) No. 89-C-108 E
)
ROGER PONN,)
)
Defendant.)

ORDER OF DISMISSAL WITH PREJUDICE

Comes on before me, the undersigned judge, the partys' Joint Stipulation for Dismissal with Prejudice in compliance with FRCP 41(a)(I) and duly signed and approved by counsel for the Plaintiff and counsel for the Defendants, it is

HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's action be and is hereby dismissed with prejudice forever and for all time.

S/John L. Wagner
U.S. Magistrate

~~UNITED STATES DISTRICT JUDGE~~

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JOHNNY T. WHATLEY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**No. 89-C-436-B**
	)	
LONE STAR LIFE INSURANCE COMPANY, a Foreign Corporation, K-MART INSURANCE SERVICES, INC., a Foreign Corporation, and P.M.B. Inc., a Foreign Corporation,	)	
	)	
Defendant.	)	

ORDER OF DISMISSAL WITH PREJUDICE

NOW ON this 7th day of Aug, **1990**, it appearing to the Court that this matter has been compromised and settled, this case is herewith dismissed with prejudice to the refiling of a future action.

S/ THOMAS R. BRETT

United States District Judge

336-135/AEA/tdr

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG -7 1990

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, Plaintiff,	)	
v.	)	CIVIL ACTION NO. 89-C-1024-E
ONE THOUSAND TWO HUNDRED NINETY-TWO DOLLARS ($1,292.00) IN UNITED STATES CURRENCY, Defendant.	)	

STIPULATION ~~FOR~~ OF DISMISSAL AND FOR FORFEITURE OF BOND

Pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, the Plaintiff, United States of America, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Catherine J. Depew, Assistant United States Attorney, and the Claimant, Russell Kevin Voss, by and through his attorney of record, John Street, hereby stipulate to dismissal of this action, without prejudice and without costs, and further stipulate that the bond in the amount of Two Hundred Fifty Dollars ($250.00) posted by the Claimant be forfeited to the United States of America, for disposition according to law, pursuant to the terms and conditions of the Release of Claim of

Seized Property and Indemnity Agreement entered into by and between the parties on the 2nd day of August, 1990.

Respectfully submitted,
TONY M. GRAHAM
United States Attorney

Catherine J. Depew

CATHERINE J. DEPEW, OBA #3836
Assistant United States Attorney
3600 United States Courthouse
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(918) 581-7463

John Street

JOHN STREET, OBA #8690
Attorney for Claimant,
Russell Kevin Voss
201 West Fifth Street
Suite 155
Tulsa, Oklahoma 74112
(918) 582-9220

CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the within and foregoing Stipulation For Dismissal has been mailed this 9th day of August, 1990, by first class mail, with postage fully prepaid thereon , to the following:

JOHN STREET
Attorney at Law
201 West Fifth Street
Suite 155
Tulsa, Oklahoma 74112

Attorney for Claimant,
Russell Kevin Voss

Catherine J. Depew
CATHERINE J. DEPEW

CJD/ch
00814

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

THRIFTY RENT-A-CAR SYSTEM, INC., an Oklahoma corporation,

Plaintiff,

vs.

PEAK VIEW MOTORS LEASING, INC., a Colorado corporation, DARYL J. MASON, and JOHN M. VENTIMIGLIA, individuals,

Defendants.

Case No. 90-C-0150E

DEFAULT JUDGMENT

On this 6 day of Aug, 1990, this matter comes on for consideration of Thrifty Rent-A-Car System, Inc.'s Application for Default Judgment before the undersigned United States District Judge. The Court, having examined the pleadings and being fully advised, finds that the Defendants Peak View Motors Leasing, Inc. and Daryl J. Mason (collectively the "Defendants") have not answered or otherwise pleaded and are in default.

The defaulting Defendants, having failed to plead or answer, are hereby adjudged by the Court to be in default. The Court further finds that:

Thrifty Rent-A-Car System, Inc. should be granted judgment in its favor against the Defendants in the aggregate amount of $150,994.10 as of June 22, 1990, plus

interest thereon at the maximum lawful rate, costs and a reasonable attorney's fee.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that a judgment be entered in favor of Thrifty Rent-A-Car System, Inc. and against Defendant in the aggregate amount of $150,994.10 as of June 22, 1990, plus interest thereon at the rate of 7.88 percent per annum from and after the entry of judgment, costs and a reasonable attorney's fee.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

Dana L. Rasure, OBA #7421
Randee F. Charney, OBA #13255
BAKER, HOSTER, McSPADDEN,
CLARK, RASURE & SLICKER
800 Kennedy Building
Tulsa, Oklahoma 74103
(918) 592-5555

John M. Hickey, OBA #11100
THRIFTY RENT-A-CAR SYSTEM, INC.
5330 East 31st Street
Suite 900
Tulsa, Oklahoma 74153
(918) 665-9319

Attorneys for Plaintiff
Thrifty Rent-A-Car System, Inc.

FILED

AUG -7 1990

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

NORWEST EQUIPMENT FINANCE, INC., SUCCESSOR BY MERGER TO NORWEST LEASING, INC.,

Plaintiff,

vs.

DONALD O. TREGONING, individually and DONALD O. TREGONING d/b/a TREGONING CHIROPRACTIC CENTER,

Defendant,

vs.

LEASE NEW ENGLAND CORPORATION,

Third-Party Defendants,

and

RONALD L. HALSTEAD and MANAGEMENT I. SYSTEMS, INC., an ARIZONA CORPORATION d/b/a PRACTICE SYSTEMS,

Third-Party Defendants.

Case No. 90 C-0147B

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE BETWEEN AND AS TO NORWEST EQUIPMENT FINANCE, INC. AND DONALD O. TREGONING, INDIVIDUALLY, AND d/b/a TREGONING CHIROPRACTIC

COMES NOW Norwest Equipment Financing, Inc. and Donald O. Tregoning, individually and d/b/a Tregoning Chiropractic by and through their attorneys of record and, pursuant to

4

FRCP 41, do dismiss their causes of action against each other with prejudice.

DATED this 7th day of August, 1990.

NORWEST EQUIPMENT FINANCING, INC.

By: _____

Madalene A. B. Witterholt
Crowe & Dunlevy
Kennedy Building
Suite 500
321 S. Boston
Tulsa, OK 74103
Attorney for Norwest

Donald O. Tregoning Individually and DBA Tregoning Chiropractic Clinic

By: _____

W. Kirk Clausing
1924 S. Utica Ave.
Suite 410
Tulsa, OK 74104

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing was mailed, postage prepaid, this 7th day of August, 1990, to:

W. Kirk Clausing
1924 S. Utica Ave.
Suite 410
Tulsa, OK 74104

W. E. Sparks
2624 E. 21st
Suite 4
Tulsa, OK 74114

_____

25.90BTSO

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 07 1990 at

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CECIL L. DRAKES,

Plaintiff,

vs.

MORRISON MANAGEMENT SERVICE, INC., et al.,

Defendants.

No. 89-C-707-E

O R D E R

Upon application of Plaintiff Cecil L. Drakes to dismiss this action and there being no objection of Defendants,

IT IS THEREFORE ORDERED that this action is dismissed with prejudice, each side to bear its own costs and fees, including attorney fees.

ORDERED this 6th day of August, 1990.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

20

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 7 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA	)	
	)	
Plaintiff(s)	)	
	)	
vs.	)	No. 90-C-59-C
	)	
GARY P WALKER	)	
	)	
Defendant(s)	)	

ADMINISTRATIVE CLOSING ORDER

The Defendant, having filed it's petition in bankruptcy and these proceedings being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

IF, within 30 days of final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 6 day of august, 1990.

UNITED STATES DISTRICT JUDGE

5

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA Plaintiff, vs. ERLENE HARVEY, a/k/a ERLENE ABBOTT Defendant.	)	FILED AUG 07 1990 Jack C. Silver, Clerk U.S. DISTRICT COURT CIVIL ACTION NO. 90-C-443-E

DEFAULT JUDGMENT

This matter comes on for consideration this 6 day of Aug, 1990, the Plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Catherine J. Depew, Assistant United States Attorney, and the Defendant, Erlene Harvey, a/k/a Erlene Abbott, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, Erlene Harvey, a/k/a Erlene Abbott, was served with Summons and Complaint on June 11, 1990. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Plaintiff have and recover judgment against the Defendant, Erlene Harvey A/K/A Erlene Abbott, for the principal amount of $2,650.59, plus accrued interest of $1,207.87 as of March 23, 1990, plus interest thereafter at the rate of nine percent per

annum until judgment, plus interest thereafter at the current legal rate of 7.88 percent per annum until paid, plus costs of this action.

S/ JAMES O. ELLISON
United States District Judge

CJD:rlk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

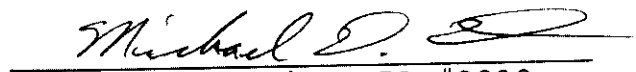
SAMSON RESOURCES COMPANY, a corporation,	)	
Plaintiff,	)	
vs.	)	Case No. 89-C-1060-B
DELHI GAS PIPELINE CORPORATION, a corporation,	)	
Defendant.	)	

STIPULATION OF DISMISSAL
WITHOUT PREJUDICE

COME NOW the parties Samson Resources Company and Delhi Gas Pipeline Corporation and hereby dismiss without prejudice the above styled litigation pursuant to and in accordance with Rule 41(a)(1)(ii), Federal Rules of Civil Procedure.

Respectfully submitted,

DOYLE & HARRIS



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Attorneys for Defendant
Delhi Gas Pipeline Corporation

and

R.K. Pezold
Kenneth J. Treece
BRUNE, PEZOLD, RICHEY & LEWIS
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Suite 700 Sinclair Building
Tulsa, OK 74103

Attorneys for Plaintiff
Samson Resources Company

469-3-38/ras

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DEBORAH SUE GRAYSON,

Defendant.

Civil Action No. 90-C-340-E

DEFAULT JUDGMENT

This matter comes on for consideration this 6 day of August, 1990, the Plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Catherine J. Depew, Assistant United States Attorney, and the Defendant, Deborah Sue Grayson, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, Deborah Sue Grayson, acknowledged receipt of Summons and Complaint on May 5, 1990. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Plaintiff have and recover judgment against the Defendant, Deborah Sue Grayson, for the principal amount of $822.10, plus accrued interest of $136.95 as of March 20, 1990, plus interest

thereafter at the rate of three (3) percent per annum until judgment, plus interest thereafter at the current legal rate of 7.88 percent per annum until paid, plus costs of this action.

United States District Judge

mmp

3142-160

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

KOCH PIPELINES, INC.,

Plaintiff,

vs.

TOM E. CODY, et al,

Defendants,

and

SHERWOOD CONSTRUCTION COMPANY, INC.,

Third Party Defendant.

No. 90-C-310-B

FILED
AUG 7 1990
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE OF PLAINTIFF'S THIRD CAUSE OF ACTION AGAINST DEFENDANTS, AND DISMISSAL OF DEFENDANTS' THIRD PARTY COMPLAINT

There comes on for hearing before the undersigned Judge, the Joint Stipulation of the Plaintiff and Defendants for dismissal with prejudice of Plaintiff's Third Cause of Action in its Amended Complaint and the Defendants' Third Party Complaint against Sherwood Construction Company, Inc. The Court is of the opinion that the stipulation is well taken and,

It is therefore ORDERED that the Plaintiff's Third Cause of Action in its Amended Complaint and the Defendants' Third Party Complaint against Sherwood Construction Company, Inc., be and are hereby dismissed with prejudice.

UNITED STATES DISTRICT JUDGE

45

Stephen A. Schuller 7992
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Attorneys for the Defendants

SAS1/lam:AWCDWPO

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ROBERT DWAYNE PUNNEO, an Incompetent, by and through his Guardian, The Fourth National Bank of Tulsa,

Plaintiff,

vs.

GROUP LIFE & HEALTH BENEFITS PLAN OF AMERICAN AIRLINES INC. AND AMERICAN AIRLINES,

Defendants.

No. 88-C-559-E

ORDER AND JUDGMENT

This matter comes before the Court on the objections of Defendants to the Magistrate's Report and Recommendation of March 26, 1990. This matter was before the Magistrate on cross motions for summary judgment. Although the Magistrate carefully recited the facts relevant to this matter, the facts will be restated here to clarify the Court's opinion.

Plaintiff seeks payment of his medical expenses under an insurance plan administered by American Airlines. Jim Mangold is an employee of American Airlines and is covered under the self-insured medical reimbursement plan administered by American. Mangold married Plaintiff's mother, Neysa Punneo on March 28, 1981, when Plaintiff was a seventeen-year-old unemancipated minor. Neysa Punneo had custody of Plaintiff, who resided with her, and was receiving child support from Plaintiff's natural father.

Plaintiff was severely injured in a motorcycle accident March 30, 1981, only two days following his mother's marriage to Mangold. As a result of the accident Plaintiff was left quadriplegic. Plaintiff was covered by his mother's insurance policy, carried through her employer, at the time of the accident. Plaintiff's medical expenses up to the maximum amount of the policy, $250,000.00, were paid by that plan. Plaintiff continues to incur medical expenses for constant nursing care and maintenance.

The claims administrator for American's plan determined on March 2, 1982 that Plaintiff was entitled to secondary insurance coverage under America's plan. Plaintiff received $15,000.00 from American's plan from the date of the accident to March 1984. Neysa Punneo and Mangold were divorced March 27, 1984. Mangold removed Plaintiff's mother as a beneficiary under his insurance plan on March 28, 1984. Plaintiff's subsequent insurance claims were denied coverage by American, resulting in the filing of this suit.

The Magistrate recommended that the Court find the insurance contract unambiguous, and the Court adopts this finding. The American insurance plan in effect in 1980, when Mangold married Plaintiff's mother, defined an eligible dependent as a person who is the employee's:

(1) spouse;

(2) unmarried child under age 19; or

(3) unmarried child age 19 but under age 23, provided that such child maintains his or her legal residence with the employee, is wholly dependent on the employee for

maintenance and support, and is enrolled in a program of study at an educational institution requiring regular, full time attendance leading to a degree or certificate.

(Exhibit "C" to Appendix to Defendant's Brief in Support of Motion for Summary Judgment ("Defendants' Appendix"), page 5.) The plan's provisions define "child" to include "stepchildren, legally-adopted children and foster children who reside with the employee and are wholly dependent upon the employee for maintenance and support." (Exhibit "C" to Defendants' Appendix, page 5.) The plan's provisions state with regard to disabled persons:

> A child who is physically or mentally incapable of self-support upon the attainment of age 19, if not a student, or age 23, if a registered student as described above, may continue to be covered as a dependent under the Medical, Dental and Vision Care Expense Benefits while incapacitated and unmarried, as long as your coverage continues in effect. You must submit proof of incapacity within three days of the date coverage would otherwise terminate, and additional proof may be required from time to time.

(Exhibit "C" to Defendants' Appendix, page 5.)

The parties agree that at the time of Plaintiff's accident in 1981 he was a stepchild of an American employee. Plaintiff was consequently eligible to receive dependent coverage under the plan and did indeed receive plan benefits. Plaintiff's status as a dependent child continued until his mother's 1984 divorce from the American employee, Mr. Mangold. The Court concludes that Plaintiff's coverage under the plan ceased at the time of the divorce because Plaintiff was no longer a "child" as that term is

defined in the plan. For this reason, the Court cannot adopt the Magistrate's recommendation that the incapacity provision excuses the requirement of being a "child" when one meets the requirement of incapacity without marriage and employee coverage.

The insurance plan defines "child." Accordingly, this definition must have the same meaning throughout the contract. Houston v. National General Ins. Co., 817 F.2d 83 (10th Cir. 1987). Under the terms of the plan, children may continue to be eligible for dependent coverage when they are incapacitated. To qualify because of incapacity, however, one must first be a "child" as the plan defines it. Plaintiff ceased to qualify as a child under the plan when his mother and Mangold divorced. "Child" as defined, must have a consistent meaning throughout the contract. By including "child" in the incapacitation provision, the definition of "child" controls the definition of those individuals eligible for continued dependent coverage. There is no legal support for the proposition that coverage continued in perpetuity despite a change in the legal relationship between the covered employee and the dependent. Reading this provision in light of the plan's definition of "child" reveals that it is intended to override only the age limitation for dependent coverage.

IT IS THEREFORE ORDERED that the Court declines to adopt the report and recommendation of the Magistrate. The motion of Defendants for summary judgment is sustained and the motion of Plaintiff for summary judgment is denied. Defendants are awarded judgment in their favor and against the Plaintiff.

ORDERED this 6th day of August, 1990.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

7300883.03

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LINEAR FILMS, INC., an Oklahoma corporation,	)	
Plaintiff,	)	
v.	)	Case No. 90-C-322-E
SOUTHEAST EQUIPMENT SUPPLY, INC., a Georgia corporation,	)	
Defendant.	)	

JOINT STIPULATION OF DISMISSAL, WITH PREJUDICE

COME NOW the Plaintiff, Linear Films, Inc., an Oklahoma corporation, and the Defendant, Southeast Equipment Supply, Inc., a Georgia corporation, and, pursuant to Rule 41(a)(1)(ii) stipulate to the dismissal, with prejudice, of the above referenced action.

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OF COUNSEL:

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OF COUNSEL:

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& DICKMAN
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Tulsa, Oklahoma 74103
(918) 587-0000

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MOBILE VIDEO, INC., an Oklahoma Corporation, Debtor. MOBILE VIDEO, INC., Appellant, v. AMERICAN BANK AND TRUST COMPANY, Appellee.	Bankruptcy Case No. 88-03411-W Adversary No. 89-0022-W District Court Case No. 89-C-462-E

As Consolidated With

MOBILE VIDEO, INC., an Oklahoma Corporation, Debtor, MOBILE VIDEO, INC., Appellant, v. AMERICAN BANK AND TRUST COMPANY, Appellee.	Bankruptcy Case No. 88-03411-W District Court Case No. 89-C-463-E

ORDER

Now before the court is the appeal of Mobile Video, Inc. ("Mobile") from the final judgment of the United States Bankruptcy Court for the Northern District of Oklahoma entered on May 25, 1989. Mobile filed for reorganization under Chapter 11 of the Bankruptcy Code on November 7, 1988. Its principal asset is 26 acres of land in Glenpool, Oklahoma that was originally utilized as a commercial softball complex. The property was purchased by

David Simmons after the original owner, Kendalwood Corporation, filed for bankruptcy in 1982. Kendalwood was indebted on a first mortgage to Woodland Bank and a second mortgage to American Bank and Trust Company ("American") at the time of bankruptcy.

David Simmons secured a loan in the amount of $525,000.00 from American for the purchase of the property and pre-existing mortgages on it were paid off. Unknown to American officers, Simmons also borrowed a sum from Kendalwood Corporation and others to pay liens, taxes, and other costs and executed a security agreement pledging his 65% interest in a shell corporation, Mobile, to secure repayment to Kendalwood in return (Kendalwood owned the other 35% interest in Mobile). Phillip Ashmore, president of Kendalwood Corporation as well as Mobile, used Mobile to secure a loan from American to provide the sum to Simmons, because the loan documents with American prohibited Simmons from placing a second mortgage on the property. In return, the property was conveyed to Mobile as collateral by Simmons. Additional loans were made by American in 1985 and 1986 to Simmons. A note and mortgage consolidating the first mortgage and additional loans was later executed both by the Simmons individually and by Mobile, by Simmons as president and his wife. The face amount of this note was $850,000.00, but only $325,000.00 was funded and the first mortgage note remained in place. A third mortgage in the amount of $75,000 was executed by Simmons later.

David Simmons' and Mobile's notes went into default in May of 1987. In addition, David Simmons' obligation to Kendalwood

Corporation went into default at that time. Kendalwood Corporation exercised its rights under its security agreement and became a 100% owner of Mobile Video, Inc. American initiated a mortgage foreclosure proceeding in June of 1987 and Kendalwood Corporation and Mobile filed defenses to the action in the District Court of Tulsa County, conceding the first mortgage lien of $525,000.00.

A judgment and decree of foreclosure on the initial note and mortgage to which Mobile was not a party was entered by the District Court of Tulsa County on September 16, 1988. The property was scheduled for Sheriff's Sale November 10, 1988, but Mobile Video filed for Chapter 11 protection three days prior to the sale. American filed a Motion to Dismiss the bankruptcy and a Motion for Relief from Automatic Stay, and these were heard by the Bankruptcy Court on December 20 and 21, 1988. At a trial held on May 15 and 16, 1989, the Bankruptcy Court upheld the validity of American's second and third mortgage claims and entered a decree of foreclosure as to those mortgages. The court determined that American had a secured claim of $1,025,355.00. (TR 267) The court specifically found that the first obligation of $525,000.00 was not in dispute and was a valid and existing mortgage against the property. (TR 267) The court found that the second and third mortgages were used to pay valid, existing debts of the corporation, including ad valorem real estate taxes, attorney's fees and interest. (TR 267)

The Bankruptcy Judge concluded David Simmons had authority to execute the notes and mortgages:

> Under all the evidence presented here, I specifically find that Mr. Simmons had the authority to obligate this corporation and that Kendalwood, through Mr. Ashmore, acquiesced in the same and that the second mortgage, or the mortgage referred to as the second mortgage, being Joint Trial Exhibit 21, is a valid mortgage on the property.
>
> The Court also finds that the mortgage shown as Trial Exhibit 25 is also a valid mortgage on the property.
>
> Understanding the circumstances in this scenario of events, the benefits of Kendalwood, the benefits of Mr. Simmons, the benefits of Mr. Ashmore, these facts compel this Court to find that Mr. Simmons in fact had authority to obligate the corporation.
>
> The Court specifically finds that the $75,000.00 placed in the hands of ABT by Mr. Simmons on or about November 1st, was properly used to make interest payments for 14.3 months on the Promissory Note dated May 2nd or 1st, 1983, in the sum of $525,000.00.
>
> The Court specifically finds that under the evidence presented the value of the property, the real estate, is in the sum of $950,000.
>
> The Court specifically finds that taxes on the real estate for 1988 remain unpaid. (Emphasis added.) (TR 266)

The court found that, because there was no equity in the property for the benefit of Mobile, American should be allowed to foreclose its real estate mortgages and the automatic stay lifted to allow foreclosure pursuant to 11 U.S.C. § 356 (d)(2).

Mobile now appeals the bankruptcy court's decision, saying David Simmons, during the time he was president of Mobile, had no authority to borrow funds from American in the name of Mobile to satisfy his personal indebtedness, thus making American's second and third liens on Mobile's real property invalid and unenforceable obligations. Mobile also alleges the bankruptcy court erred in modifying the automatic stay to permit American to enforce its

mortgages. American claims that the evidence shows that Simmons had the authority to borrow funds in the name of Mobile and that this appeal is moot by reason of the sale of the property on October 16, 1989 and the confirmation of that sale by the Bankruptcy Court on November 9, 1989.

Bankruptcy Rule 8013 sets forth a "clearly erroneous" standard for appellate review of bankruptcy rulings with respect to findings of fact. In re: Morrissey, 717 F.2d 100, 104 (3rd Cir. 1983). However, this "clearly erroneous" standard does not apply to review of mixed questions of law and fact, which are subject to the de novo standard of review. In re: Ruti-Sweetwater, Inc., 836 F.2d 1263, 1266 (10th Cir. 1988); In re: Mullett, 817 F.2d 677, 679 (10th Cir. 1987). The parties agree that this appeal challenges both the court's factual determination of Simmon's authority and the legal conclusion that the appeal is moot under 11 U.S.C. § 363.

The court has trouble reaching the merits of Mobile's appeal, because American's mortgage has been foreclosed, the property sold, and the sale confirmed. The purchase price was less than the amount of American's first mortgage. The authority to sell property of the bankruptcy estate is given to the trustee in 11 U.S.C. § 363. Paragraph (m) of that section reads as follows:

> The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

Courts have held that an appeal of a bankruptcy sale to a purchaser in good faith is moot if the stay required by § 363 (m) is not obtained. In re Sax, supra at 997; In re Vetter Corp., 724 F.2d 52, 55-56 (7th Cir. 1983). The Tenth Circuit in In re Bel Air Associates, 706 F.2d 301, 304-305 (10th Cir. 1983), has come to the same conclusion applying Fed.R.Bankr.P. 805, which is now Fed.R.Bankr.P. 8005. The Advisory Committee Note following Bankruptcy Rule 8005 refers to and sets forth the language of 11 U.S.C. § 363 (m).

It is clear that Mobile made no attempt to post a bond or seek any type of stay prior to appealing the bankruptcy sale. Mobile merely opposed all of American's requests for relief following the entry of judgment on May 16, 1989. It is also clear that Mobile has shown no evidence of American's bad faith in purchasing the property. Therefore, Mobile's right of redemption is foreclosed under 12 O.S. § 774[1] and the appeal is moot.

Despite its determination of the issue of mootness, the court has examined the merits of the case and alternatively concludes that the findings of the bankruptcy judge were not clearly erroneous. The testimony at trial revealed that David Simmons was an officer of Mobile (TR 145) and negotiated to buy the real property at issue with American's officers (TR 149, 151). He sat

[1] 12 O.S. §774 reads as follows:

If any judgment or judgments, in satisfaction of which any lands or tenements are sold, shall at any time thereafter be reversed, such reversal shall not defeat or affect the title of the purchaser or purchasers; but in such cases, restitution shall be made, by the judgment creditors, of the money, for which such lands or tenements were sold, with lawful interest from the day of sale.

at the closing of the loan and the sale of the property (TR 152-153) and at the closing deeded the property to Mobile (TR 155). He signed the corporate resolution at the closing which agreed to the sale (TR 155). While this was not adequate to give him actual authority to obligate Mobile, the court surely could find apparent authority to do so.[2] In addition, Mr. Ashmore, the other major officer and a 35% shareholder of Mobile, acquiesced in these actions. The bank had no idea of the "shell" character of Mobile at the time of the financial transactions leading to Mobile's liability. Substantial evidence exists within the record to sustain the trial court's findings, and Mobile is not entitled to a trial de novo on the facts as presented to the Bankruptcy Court.

The court finds that the appeal of Mobile from the final judgment of the United States Bankruptcy Court for the Northern District of Oklahoma should be and is dismissed.

Dated this 6th day of December, 1990.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

[2] Apparent authority is "the power to affect the legal relations of another person by transactions with third persons, professedly as agent for the other, arising from and in accordance with the other's manifestations to such third persons'.... If a third party, based on a principal's manifestations, reasonably believes that the supposed agent is authorized to enter into a transaction or agreement, the principal will not be allowed to deny liability under the agreement even if the agent had no actual authority to act for the principal. Apparent authority is created by the principal's manifestations to the third party...." Capital Dredge and Dock v. City of Detroit, 800 F.2d 525, 530 (6th Cir. 1986). See also N.L.R.B. v. Donkins Inn, Inc., 532 F.2d 138, 141 (9th Cir.), cert. den. 429 U.S. 895 (1976).

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

KIMBERLY W. McMAHON,)
)
Plaintiff,)
)
vs.) No. 90-C-394-E
)
GARY MAYNARD, Warden, et al.,)
)
Defendants.)

O R D E R

This matter is before the Court on the motion of Petitioner to dismiss this action without prejudice. Respondents do not object.

IT IS THEREFORE ORDERED that the motion of Petitioner Kimberly W. McMahon to dismiss this action is sustained. This action is dismissed without prejudice.

ORDERED this 6th day of August, 1990.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LUCY WALKER,

Plaintiff,

vs.

RAYMOND N. ROBBINS, Guardian of Lucy Walker,

Defendant.

Case No. 90-C-377-E

ORDER OF DISMISSAL WITH PREJUDICE

The Court has for its consideration the Stipulation of Dismissal filed jointly by the parties. Upon consideration of that Stipulation, the Court hereby orders that this matter be dismissed, with prejudice, each party to bear its costs and fees. In addition, the temporary restraining order entered in this case is hereby dissolved.

DATED this 6th day of ~~July~~ August, 1990.

S/ JAMES O. ELLISON

JAMES O. ELLISON

APPROVED:

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John E. Dowdell, OBA #2460
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Attorneys for Defendant,
Raymond N. Robbins

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MOBILE VIDEO, INC., an Oklahoma Corporation,	)	Bankruptcy Case No. 88-03411-W
Debtor.	)	Adversary No. 89-0022-W
MOBILE VIDEO, INC.,	)	District Court Case No. 89-C-462-E
Appellant,	)	
v.	)	
AMERICAN BANK AND TRUST COMPANY,	)	
Appellee.	)	

AUG 6, 1990

As Consolidated With

MOBILE VIDEO, INC., an Oklahoma Corporation,	)	Bankruptcy Case No. 88-03411-W
Debtor,	)	District Court Case No. 89-C-463-E
MOBILE VIDEO, INC.,	)	
Appellant,	)	
v.	)	
AMERICAN BANK AND TRUST COMPANY,	)	
Appellee.	)	

ORDER

Now before the court is the appeal of Mobile Video, Inc. ("Mobile") from the final judgment of the United States Bankruptcy Court for the Northern District of Oklahoma entered on May 25, 1989. Mobile filed for reorganization under Chapter 11 of the Bankruptcy Code on November 7, 1988. Its principal asset is 26 acres of land in Glenpool, Oklahoma that was originally utilized as a commercial softball complex. The property was purchased by

David Simmons after the original owner, Kendalwood Corporation, filed for bankruptcy in 1982. Kendalwood was indebted on a first mortgage to Woodland Bank and a second mortgage to American Bank and Trust Company ("American") at the time of bankruptcy.

David Simmons secured a loan in the amount of $525,000.00 from American for the purchase of the property and pre-existing mortgages on it were paid off. Unknown to American officers, Simmons also borrowed a sum from Kendalwood Corporation and others to pay liens, taxes, and other costs and executed a security agreement pledging his 65% interest in a shell corporation, Mobile, to secure repayment to Kendalwood in return (Kendalwood owned the other 35% interest in Mobile). Phillip Ashmore, president of Kendalwood Corporation as well as Mobile, used Mobile to secure a loan from American to provide the sum to Simmons, because the loan documents with American prohibited Simmons from placing a second mortgage on the property. In return, the property was conveyed to Mobile as collateral by Simmons. Additional loans were made by American in 1985 and 1986 to Simmons. A note and mortgage consolidating the first mortgage and additional loans was later executed both by the Simmons individually and by Mobile, by Simmons as president and his wife. The face amount of this note was $850,000.00, but only $325,000.00 was funded and the first mortgage note remained in place. A third mortgage in the amount of $75,000 was executed by Simmons later.

David Simmons' and Mobile's notes went into default in May of 1987. In addition, David Simmons' obligation to Kendalwood

Corporation went into default at that time. Kendalwood Corporation exercised its rights under its security agreement and became a 100% owner of Mobile Video, Inc. American initiated a mortgage foreclosure proceeding in June of 1987 and Kendalwood Corporation and Mobile filed defenses to the action in the District Court of Tulsa County, conceding the first mortgage lien of $525,000.00.

A judgment and decree of foreclosure on the initial note and mortgage to which Mobile was not a party was entered by the District Court of Tulsa County on September 16, 1988. The property was scheduled for Sheriff's Sale November 10, 1988, but Mobile Video filed for Chapter 11 protection three days prior to the sale. American filed a Motion to Dismiss the bankruptcy and a Motion for Relief from Automatic Stay, and these were heard by the Bankruptcy Court on December 20 and 21, 1988. At a trial held on May 15 and 16, 1989, the Bankruptcy Court upheld the validity of American's second and third mortgage claims and entered a decree of foreclosure as to those mortgages. The court determined that American had a secured claim of $1,025,355.00. (TR 267) The court specifically found that the first obligation of $525,000.00 was not in dispute and was a valid and existing mortgage against the property. (TR 267) The court found that the second and third mortgages were used to pay valid, existing debts of the corporation, including ad valorem real estate taxes, attorney's fees and interest. (TR 267)

The Bankruptcy Judge concluded David Simmons had authority to execute the notes and mortgages:

> Under all the evidence presented here, I specifically find that Mr. Simmons had the authority to obligate this corporation and that Kendalwood, through Mr. Ashmore, acquiesced in the same and that the second mortgage, or the mortgage referred to as the second mortgage, being Joint Trial Exhibit 21, is a valid mortgage on the property.
>
> The Court also finds that the mortgage shown as Trial Exhibit 25 is also a valid mortgage on the property.
>
> Understanding the circumstances in this scenario of events, the benefits of Kendalwood, the benefits of Mr. Simmons, the benefits of Mr. Ashmore, these facts compel this Court to find that Mr. Simmons in fact had authority to obligate the corporation.
>
> The Court specifically finds that the $75,000.00 placed in the hands of ABT by Mr. Simmons on or about November 1st, was properly used to make interest payments for 14.3 months on the Promissory Note dated May 2nd or 1st, 1983, in the sum of $525,000.00.
>
> The Court specifically finds that under the evidence presented the value of the property, the real estate, is in the sum of $950,000.
>
> The Court specifically finds that taxes on the real estate for 1988 remain unpaid. (Emphasis added.) (TR 266)

The court found that, because there was no equity in the property for the benefit of Mobile, American should be allowed to foreclose its real estate mortgages and the automatic stay lifted to allow foreclosure pursuant to 11 U.S.C. § 356 (d)(2).

Mobile now appeals the bankruptcy court's decision, saying David Simmons, during the time he was president of Mobile, had no authority to borrow funds from American in the name of Mobile to satisfy his personal indebtedness, thus making American's second and third liens on Mobile's real property invalid and unenforceable obligations. Mobile also alleges the bankruptcy court erred in modifying the automatic stay to permit American to enforce its

mortgages. American claims that the evidence shows that Simmons had the authority to borrow funds in the name of Mobile and that this appeal is moot by reason of the sale of the property on October 16, 1989 and the confirmation of that sale by the Bankruptcy Court on November 9, 1989.

Bankruptcy Rule 8013 sets forth a "clearly erroneous" standard for appellate review of bankruptcy rulings with respect to findings of fact. In re: Morrissey, 717 F.2d 100, 104 (3rd Cir. 1983). However, this "clearly erroneous" standard does not apply to review of mixed questions of law and fact, which are subject to the de novo standard of review. In re: Ruti-Sweetwater, Inc., 836 F.2d 1263, 1266 (10th Cir. 1988); In re: Mullett, 817 F.2d 677, 679 (10th Cir. 1987). The parties agree that this appeal challenges both the court's factual determination of Simmon's authority and the legal conclusion that the appeal is moot under 11 U.S.C. § 363.

The court has trouble reaching the merits of Mobile's appeal, because American's mortgage has been foreclosed, the property sold, and the sale confirmed. The purchase price was less than the amount of American's first mortgage. The authority to sell property of the bankruptcy estate is given to the trustee in 11 U.S.C. § 363. Paragraph (m) of that section reads as follows:

> The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

Courts have held that an appeal of a bankruptcy sale to a purchaser in good faith is moot if the stay required by § 363 (m) is not obtained. In re Sax, supra at 997; In re Vetter Corp., 724 F.2d 52, 55-56 (7th Cir. 1983). The Tenth Circuit in In re Bel Air Associates, 706 F.2d 301, 304-305 (10th Cir. 1983), has come to the same conclusion applying Fed.R.Bankr.P. 805, which is now Fed.R.Bankr.P. 8005. The Advisory Committee Note following Bankruptcy Rule 8005 refers to and sets forth the language of 11 U.S.C. § 363 (m).

It is clear that Mobile made no attempt to post a bond or seek any type of stay prior to appealing the bankruptcy sale. Mobile merely opposed all of American's requests for relief following the entry of judgment on May 16, 1989. It is also clear that Mobile has shown no evidence of American's bad faith in purchasing the property. Therefore, Mobile's right of redemption is foreclosed under 12 O.S. § 774[1] and the appeal is moot.

Despite its determination of the issue of mootness, the court has examined the merits of the case and alternatively concludes that the findings of the bankruptcy judge were not clearly erroneous. The testimony at trial revealed that David Simmons was an officer of Mobile (TR 145) and negotiated to buy the real property at issue with American's officers (TR 149, 151). He sat

[1] 12 O.S. §774 reads as follows:

If any judgment or judgments, in satisfaction of which any lands or tenements are sold, shall at any time thereafter be reversed, such reversal shall not defeat or affect the title of the purchaser or purchasers; but in such cases, restitution shall be made, by the judgment creditors, of the money, for which such lands or tenements were sold, with lawful interest from the day of sale.

at the closing of the loan and the sale of the property (TR 152-153) and at the closing deeded the property to Mobile (TR 155). He signed the corporate resolution at the closing which agreed to the sale (TR 155). While this was not adequate to give him actual authority to obligate Mobile, the court surely could find apparent authority to do so.[2] In addition, Mr. Ashmore, the other major officer and a 35% shareholder of Mobile, acquiesced in these actions. The bank had no idea of the "shell" character of Mobile at the time of the financial transactions leading to Mobile's liability. Substantial evidence exists within the record to sustain the trial court's findings, and Mobile is not entitled to a trial de novo on the facts as presented to the Bankruptcy Court.

The court finds that the appeal of Mobile from the final judgment of the United States Bankruptcy Court for the Northern District of Oklahoma should be and is dismissed.

Dated this 6th day of December, 1990.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

[2] Apparent authority is "the power to affect the legal relations of another person by transactions with third persons, professedly as agent for the other, arising from and in accordance with the other's manifestations to such third persons'.... If a third party, based on a principal's manifestations, reasonably believes that the supposed agent is authorized to enter into a transaction or agreement, the principal will not be allowed to deny liability under the agreement even if the agent had no actual authority to act for the principal. Apparent authority is created by the principal's manifestations to the third party...." Capital Dredge and Dock v. City of Detroit, 800 F.2d 525, 530 (6th Cir. 1986). See also N.L.R.B. v. Donkins Inn, Inc., 532 F.2d 138, 141 (9th Cir.), cert. den. 429 U.S. 895 (1976).

IN THE U.S. DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

KELLY OIL & GAS CO., INC.,

Plaintiff,

vs.

COSSACK ENERGY GROUP LTD., ET AL.

Defendants.

CASE NO. 89-C-625B

ORDER OF DISMISSAL WITH PREJUDICE

The motion of plaintiff to dismiss with prejudice its Complaint filed herein came on for hearing before the undersigned Magistrate on this the 3rd day of August, 1990.

The plaintiff was represented by its counsel of record, David M. Thornton of Thornton and Thornton, a Professional Corporation and the Defendant, Cossack was represented by its principal officer, director and shareholder, Dennis Lee and Defendant, Dennis Lee, appeared pro se.

The defendants expressed no objection to plaintiff's motion and agreed it could be entered.

The plaintiff informed the Court that there was on deposit with the Clerk of the Court the sum of $1,357.81 and that in view of plaintiff's motion said sum should be returned to Ronald Lee, the owner of the account from which a former defendant, Bank of Cushing & Trust Co., had withdrawn same and deposited it with the Clerk.

Upon due consideration IT IS HEREBY ORDERED that plaintiff's motion to dismiss without prejudice be granted; and

IT IS FURTHER ORDERED that the sum of $1,357.81 be disbursed and paid to Ronald Lee.

DATED this 6th day of August, 1990.

S/ THOMAS R. BRETT
UNITED STATES ~~MAGISTRATE~~ DISTRICT JUDGE

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THORNTON and THORNTON,
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KELLY.COS\10

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DIANNA J. FOURIER)
)
Plaintiff,)
)
vs.) No. 89-C-678-E
)
INDEPENDENT SCHOOL DISTRICT)
#6, PAWNEE COUNTY D/B/A)
CLEVELAND PUBLIC SCHOOLS, and)
POLITICAL SUBDIVISION)
)
Defendants.

ORDER AND JUDGMENT

This matter comes before the Court on cross motions for summary judgment filed by Plaintiff, Dianna J. Fourier (Fourier) and Defendant, Cleveland Public Schools. Plaintiff brings this action under 42 U.S.C. §1983. Plaintiff is a former bus driver for Cleveland Public Schools. She alleges that the school district terminated her employment without cause and without a pre-termination or post-termination hearing, in violation of her due process rights guaranteed by the fourteenth amendment, and §1983.

The question presented for the Court's consideration, and which is dispositive of both motions, is whether a bus driver for the Cleveland Public Schools has a constitutionally protected property interest in continued employment which requires the school district to renew her contract. The Court concludes that Plaintiff does not possess a property in continued employment protected by the Constitution.

Fourier had been employed by Cleveland Public Schools as a bus

driver with substantially identical one-year contracts during the 1984-85 school year, the 1985-86 school year, the 1986-87 school year, the 1987-88 school year, and the 1988-89 school year. Fourier's 1988-89 contract provided:

> It is hereby agreed ... that the School Bus Driver [Fourier] is hereby employed by the Board on a monthly basis beginning the 25th day of August, 1988, and ending on the last day of the school term ...

Following the expiration of her contract at the end of the 1988-89 school year, she was not offered a new school bus driver's contract for the 1989-90 school year. Fourier was not provided any hearing in connection with the decision not to offer her a new contract.

The Cleveland School District's policy governing support employees states:

> Support employees have no continuing contract or renewal rights. The procedures of this policy only protect employees who have been employed more than one year immediately preceding adverse employment action and are suspended or discharged during a contractual period of employment.

Cleveland School District Policy Book (Policy), Section F, ¶7, (Exhibit "J" to Defendant's Brief in Support of Motion for Summary Judgment). There is no dispute that Fourier was a "support employee" of the school district.

Cleveland Public Schools also maintained a reduction in force policy regarding non-certified employees, including Fourier. The Superintendent of the school district, Charles F. Clayton, has testified that this policy is maintained to protect support employees in the event the school district is required to reduce

its force during a school year. The policy does not, however, specifically so state, but such an interpretation is consistent with the school district's policy that support personnel have no continuing contract renewal rights. Policy, Section K (Exhibit "J" to Defendant's Brief).

The question whether an individual has a property interest in continued employment must be determined by looking to state law. Board of Regents v. Roth, 408 U.S. 564, 577, 92 S.Ct. 2701, 2709 (1972). In Roth the Supreme Court defined a property interest:

> To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.

408 U.S. at 577, 92 S.Ct. at 2709. In this case, Fourier had a series of year-to-year contracts, each ending on the last day of the school term. She was not terminated during the term of a contract. She was terminated after her 1988-89 contract had expired of its own terms. Further, Cleveland Public Schools' policy states explicitly that support employees have no continuing contract or renewal rights. The policy does not provide for contract renewal absent "good cause" or the like. Fourier's situation is indistinguishable from the facts of Roth in which the Supreme Court found that an untenured university professor had no guarantee that the university would renew his school-year contract. On that basis the Court held that Roth lacked a property interest sufficient to require the university to give him a hearing. 408

U.S. at 578-579, 92 S.Ct. at 2710. The same conclusion is mandated here. Fourier's property rights are co-extensive with the duration of her contract. The contract creates the property interest. Even if school district support employees can be terminated only for cause during the term of the contract, they have no assurance of contract renewal once the term expires.

Plaintiff's argument that Oklahoma law provides her with a continuing expectation of employment is unavailing. Plaintiff relies upon Okla.Stat.tit. 70 §24-133 which reads:

> A support employee who has been employed by a local board of education for more than one year shall be subject to suspension, demotion or termination only for cause, as designated by the policy of the local board of education...this section shall not be construed to prevent layoffs for lack of funds or work. For purposes of this act, "support employee" means a full-time employee of a school district as determined by the standard period of labor which is customarily understood to constitute full-time employment...and who provides those services, not performed by professional educators or licensed teachers, which are necessary for the efficient and satisfactory functioning of a school district.

This statute does not speak to contract renewal, and does not modify the Cleveland Public Schools' policy regarding support employees.

IT IS THEREFORE ORDERED that the motion of Defendant for summary judgment is sustained and the motion for summary judgment of Plaintiff is overruled. Defendant Independent School District #6, Pawnee County, d/b/a Cleveland Public Schools is granted judgment in its favor and against Plaintiff, Dianna J. Fourier.

ORDERED this 6th day of ~~July~~ Aug, 1990.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

LDC/tmm

FILED

AUG 06 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LARRY E. HENSON,

Plaintiff,

vs.

PROTEIN TECHNOLOGIES INTERNATIONAL, INC., a Delaware corporation,

Defendant.

Case No. 89-C-801-E

ORDER

This cause came to be heard on the 6th day of ~~July~~ August, 1990, on plaintiff's Motion for a voluntary dismissal with prejudice of its claims against the defendant, Protein Technologies International.

IT IS THEREBY ORDERED, ADJUDGED AND DECREED that plaintiff's action be and the same is hereby dismissed on the merits and with prejudice to any further filings.

JUDGE OF THE U.S. DISTRICT COURT

APPROVED AS TO FORM AND CONTENT:

H. L. HOLTMANN
Attorney for Plaintiff

SECREST & HILL
Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
AUG 0 1990
Jack C. Silver, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

CIVIL NUMBER 90-C-0044 E

VINCENT G. CLARK,
CSS 246 86 8716

Defendant,

ORDER OF DISMISSAL WITHOUT PREJUDICE

NOW before the Court for its consideration is the Motion of the Plaintiff, United States of America, by and through its attorney, Herbert N. Standeven, District Counsel, Department of Veterans Affairs, for an order of the Court dismissing plaintiff's cause herein without prejudice under the provision of Rule 41(a)(1) of the Federal Rules of Civil Procedure. Good cause being shown, it is hereby ordered that the relief prayed for should be granted, and the plaintiff's cause is, therefore, dismissed without prejudice.

UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

CERTIFICATE OF MAILING

This is to certify that on the ____ day of _____, 1990, a true and correct copy of the foregoing was mailed postage prepaid thereon to: VINCENT G. CLARK, Route 1, Box 1-2-28, Sapulpa, OK 74066.

LISA A. SETTLE, Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MOBILE VIDEO, INC., an Oklahoma Corporation,	)	Bankruptcy Case No. 88-03411-W
Debtor.	)	Adversary No. 89-0022-W
MOBILE VIDEO, INC.,	)	District Court Case No. 89-C-960-E
Appellant,	)	
v.	)	
AMERICAN BANK AND TRUST COMPANY,	)	
Appellee.	)	

AUG 6 1990

ORDER

Now before the court is the appeal of Mobile Video, Inc. ("Mobile") from the Order Confirming Marshal's Sale of the United States Bankruptcy Court for the Northern District of Oklahoma entered on November 9, 1989.

Mobile filed for reorganization under Chapter 11 of the Bankruptcy Code on November 7, 1988. Its principal asset is 26 acres of land in Glenpool, Oklahoma that was originally utilized as a commercial softball complex. The property was purchased by David Simmons after the original owner, Kendalwood Corporation, filed for bankruptcy in 1982. Kendalwood was indebted on a first mortgage to Woodland Bank and a second mortgage to American Bank and Trust Company ("American") at the time of bankruptcy.

David Simmons secured a loan in the amount of $525,000.00 from American for the purchase of the property and pre-existing mortgages on it were paid off. Unknown to American officers, Simmons also borrowed a sum from Kendalwood Corporation and others to pay liens, taxes, and other costs and executed a security

agreement pledging his 65% interest in a shell corporation, Mobile, to secure repayment to Kendalwood in return (Kendalwood owned the other 35% interest in Mobile). Phillip Ashmore, president of Kendalwood Corporation as well as Mobile, used Mobile to secure a loan from American to provide the sum to Simmons, because the loan documents with American prohibited Simmons from placing a second mortgage on the property. In return, the property was conveyed to Mobile as collateral by Simmons. Additional loans were made by American in 1985 and 1986 to Simmons. A note and mortgage consolidating the first mortgage and additional loans was later executed both by the Simmons individually and by Mobile, by Simmons as president and his wife. The face amount of this note was $850,000.00, but only $325,000.00 was funded and the first mortgage note remained in place. A third mortgage in the amount of $75,000 was executed by Simmons later.

David Simmons' and Mobile's notes went into default in May of 1987. In addition, David Simmons' obligation to Kendalwood Corporation went into default at that time. Kendalwood Corporation exercised its rights under its security agreement and became a 100% owner of Mobile Video, Inc. American initiated a mortgage foreclosure proceeding in June of 1987 and Kendalwood Corporation and Mobile filed defenses to the action in the District Court of Tulsa County, conceding the first mortgage lien of $525,000.00.

A judgment and decree of foreclosure on the initial note and mortgage to which Mobile was not a party was entered by the District Court of Tulsa County on September 16, 1988. The property

was scheduled for Sheriff's Sale November 10, 1988, but Mobile Video filed for Chapter 11 protection three days prior to the sale. American filed a Motion to Dismiss the bankruptcy and a Motion for Relief from Automatic Stay, and these were heard by the Bankruptcy Court on December 20 and 21, 1988. At a trial held on May 15 and 16, 1989, the Bankruptcy Court upheld the validity of American's second and third mortgage claims and entered a decree of foreclosure as to those mortgages. The court determined that American had a secured claim of $1,025,355.00. (TR 267) The court specifically found that the first obligation of $525,000.00 was not in dispute and was a valid and existing mortgage against the property. (TR 267) The court found that the second and third mortgages were used to pay valid, existing debts of the corporation, including ad valorem real estate taxes, attorney's fees and interest. (TR 267)

The Bankruptcy Judge concluded David Simmons had authority to execute the notes and mortgages:

> Under all the evidence presented here, I specifically find that Mr. Simmons had the authority to obligate this corporation and that Kendalwood, through Mr. Ashmore, acquiesced in the same and that the second mortgage, or the mortgage referred to as the second mortgage, being Joint Trial Exhibit 21, is a valid mortgage on the property.
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> The Court also finds that the mortgage shown as Trial Exhibit 25 is also a valid mortgage on the property.
>
> Understanding the circumstances in this scenario of events, the benefits of Kendalwood, the benefits of Mr. Simmons, the benefits of Mr. Ashmore, these facts compel this Court to find that Mr. Simmons in fact had authority to obligate the corporation.

> The Court specifically finds that the $75,000.00 placed in the hands of ABT by Mr. Simmons on or about November 1st, was properly used to make interest payments for 14.3 months on the Promissory Note dated May 2nd or 1st, 1983, in the sum of $525,000.00.
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> The Court specifically finds that under the evidence presented the value of the property, the real estate, is in the sum of $950,000.
>
> The Court specifically finds that taxes on the real estate for 1988 remain unpaid. (Emphasis added.) (TR 266)

The court found that, because there was no equity in the property for the benefit of Mobile, American should be allowed to foreclose its real estate mortgages and the automatic stay lifted to allow foreclosure pursuant to 11 U.S.C. § 356 (d)(2).

Mobile now appeals the bankruptcy court's decision, saying David Simmons, during the time he was president of Mobile, had no authority to borrow funds from American in the name of Mobile to satisfy his personal indebtedness, thus making American's second and third liens on Mobile's real property invalid and unenforceable obligations. Mobile also alleges the bankruptcy court erred in modifying the automatic stay to permit American to enforce its mortgages. American claims that the evidence shows that Simmons had the authority to borrow funds in the name of Mobile and that this appeal is moot by reason of the sale of the property on October 16, 1989 and the confirmation of that sale by the Bankruptcy Court on November 9, 1989.

Bankruptcy Rule 8013 sets forth a "clearly erroneous" standard for appellate review of bankruptcy rulings with respect to findings of fact. In re: Morrissey, 717 F.2d 100, 104 (3rd Cir. 1983).

However, this "clearly erroneous" standard does not apply to review of mixed questions of law and fact, which are subject to the de novo standard of review. In re: Ruti-Sweetwater, Inc., 836 F.2d 1263, 1266 (10th Cir. 1988); In re: Mullett, 817 F.2d 677, 679 (10th Cir. 1987). The parties agree that this appeal challenges both the court's factual determination of Simmon's authority and the legal conclusion that the appeal is moot under 11 U.S.C. § 363.

The court has trouble reaching the merits of Mobile's appeal, because American's mortgage has been foreclosed, the property sold, and the sale confirmed. The purchase price was less than the amount of American's first mortgage. The authority to sell property of the bankruptcy estate is given to the trustee in 11 U.S.C. § 363. Paragraph (m) of that section reads as follows:

> The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

Courts have held that an appeal of a bankruptcy sale to a purchaser in good faith is moot if the stay required by § 363 (m) is not obtained. In re Sax, supra at 997; In re Vetter Corp., 724 F.2d 52, 55-56 (7th Cir. 1983). The Tenth Circuit in In re Bel Air Associates, 706 F.2d 301, 304-305 (10th Cir. 1983), has come to the same conclusion applying Fed.R.Bankr.P. 805, which is now Fed.R.Bankr.P. 8005. The Advisory Committee Note following Bankruptcy Rule 8005 refers to and sets forth the language of 11 U.S.C. § 363 (m).

It is clear that Mobile made no attempt to post a bond or seek any type of stay prior to appealing the bankruptcy sale. Mobile merely opposed all of American's requests for relief following the entry of judgment on May 16, 1989. It is also clear that Mobile has shown no evidence of American's bad faith in purchasing the property. Therefore, Mobile's right of redemption is foreclosed under 12 O.S. § 774[1] and the appeal is moot.

Despite its determination of the issue of mootness, the court has examined the merits of the case and alternatively concludes that the findings of the bankruptcy judge were not clearly erroneous. The testimony at trial revealed that David Simmons was an officer of Mobile (TR 145) and negotiated to buy the real property at issue with American's officers (TR 149, 151). He sat at the closing of the loan and the sale of the property (TR 152-153) and at the closing deeded the property to Mobile (TR 155). He signed the corporate resolution at the closing which agreed to the sale (TR 155). While this was not adequate to give him actual authority to obligate Mobile, the court surely could find apparent authority to do so.[2] In addition, Mr. Ashmore, the other major

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[1] 12 O.S. §774 reads as follows:

> If any judgment or judgments, in satisfaction of which any lands or tenements are sold, shall at any time thereafter be reversed, such reversal shall not defeat or affect the title of the purchaser or purchasers; but in such cases, restitution shall be made, by the judgment creditors, of the money, for which such lands or tenements were sold, with lawful interest from the day of sale.

[2] Apparent authority is "'the power to affect the legal relations of another person by transactions with third persons, professedly as agent for the other, arising from and in accordance with the other's manifestations to such third persons'.... If a third party, based on a principal's manifestations, reasonably believes that the supposed agent is authorized to enter into a transaction or agreement, the principal will not be allowed to deny liability under the agreement even if the agent had no actual authority to act for the principal. Apparent authority is created by the principal's manifestations to the third party...." Capital Dredge and Dock v. City of Detroit, 800 F.2d 525, 530 (6th Cir. 1986). See also N.L.R.B. v. Donkins Inn, Inc., 532 F.2d 138, 141 (9th Cir.), cert. den. 429 U.S. 895 (1976).

officer and a 35% shareholder of Mobile, acquiesced in these actions. The bank had no idea of the "shell" character of Mobile at the time of the financial transactions leading to Mobile's liability. Substantial evidence exists within the record to sustain the trial court's findings, and Mobile is not entitled to a trial de novo on the facts as presented to the Bankruptcy Court.

The court finds that the appeal of Mobile from the Order Confirming Marshal's Sale of the United States Bankruptcy Court for the Northern District of Oklahoma should be and is dismissed.

Dated this 6th day of August, 1990.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FEDERAL DEPOSIT INSURANCE CORPORATION, in its corporate capacity,

Plaintiff,

vs.

No. 89-C-142-E

PATRICK R. BEASON and REBECCA S. BEASON, husband and wife,

Defendants.

ORDER AND JUDGMENT

This matter comes before the Court on the motion of Plaintiff Federal Deposit Insurance Corporation (FDIC) for attorney fees. Defendants have not responded to the FDIC's motion. The Court has reviewed the application, together with the supporting documentation, and the applicable authorities, and finds that the motion of the FDIC should be granted for the following reasons.

The application for attorney fees is based upon a promissory note executed by the Defendants in 1986 in favor of Century Bank, now the FDIC. The terms of the note provide for an award of the reasonable costs of collection upon the note, including attorney fees. After defaulting on the Note, the Defendants failed to appear or otherwise defend this foreclosure action, and the Court has entered a default judgment in favor of the FDIC and against the Defendants.

The Court finds that $4,388.75 is a reasonable attorney fee in this case considering not only the hours spent and the rates charged, but also the nature of this case and the results obtained. The Court also finds that this amount is fully documented in the record. Oliver's Sports Center Inc. v. National Standard Ins. Co., 615 P.2d 291 (Okla. 1980), State ex. rel. Burk v. City of Okla. City, Okla., 598 P.2d 659 (Okla. 1979); see also, Ramos v. Lamm, 713 F.2d 546, 559 (10th Cir. 1983); Standard Oil Co. v. Osage Oil and Transportation, Inc., 122 F.R.D. 267 (N.D. Okla. 1988).

IT IS THEREFORE ORDERED that the FDIC's application for attorney fees is sustained. Judgment for attorney fees is awarded in favor of the FDIC and against the Defendants in the amount of $4,388.75.

ORDERED this 6th day of ~~July~~ Aug., 1990.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

NOCO INVESTMENT CO., INC. an Oklahoma corporation, and YALE AVENUE, LTD., an Oklahoma corporation,	§	
Plaintiffs,	§	
vs.	§	Case No. 90-C-282-E
SUN REFINING AND MARKETING COMPANY, a Pennsylvania corporation; PHILLIPS 66 NATURAL GAS COMPANY, a Delaware corporation; ATLANTIC RICHFIELD COMPANY, a Delaware Corporation; CONOCO INC., a Delaware corporation; UNION PACIFIC RESOURCES, a Delaware corporation; MUSTANG FUEL CORPORATION, an Oklahoma corporation; and OXY NGL INC., a Maryland corporation,	§	
Defendants,	§	
ZGEN, INC. a/k/a BURKHART PETROLEUM CORPORATION,	§	
Third Party Defendant.	§	

ORDER

Upon application of defendant and third party plaintiff Atlantic Richfield Company ("ARCO"), and for good cause shown, the Third Party Complaint filed herein on April 30, 1990 by ARCO against ZGEN, Inc. a/k/a Burkhart Petroleum Corporation is hereby dismissed without prejudice.

S/ JAMES O. ELLISON

United States District Judge

BOYD THIS ORDER IS TO BE MAILED BY MOVANT TO ALL COUNSEL AND PRO SE LITIGANTS IMMEDIATELY UPON RECEIPT.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JOHN L. HARDIN, an individual, Plaintiff, vs. FIRST SECURITY MORTGAGE CO.; RESOLUTION TRUST CORPORATION, as Receiver for Cross Roads Savings & Loan Association and its wholly owned subsidiary Cross Roads Financial Services, Inc.; MERRILL LYNCH REALTY OPERATING PARTNERSHIP, a Delaware Limited Partnership; MERRILL LYNCH MORTGAGE CORPORATION, a New York Corporation; THE RADERGROUP, INC., an Oklahoma Corporation; and CITICORP MORTGAGE, INC., formally known as CITICORP HOMEOWNERS, INC., a Delaware Corporation, Defendants.	)	Case No. 89-C-1033-B

ORDER TO DISMISS

NOW on this 2nd day of August, 1990, comes on before the Court, Plaintiff's Motion to Dismiss the Defendant, CITICORP MORTGAGE, INC., formerly Citicorp Homeowners, Inc., and the Court having read the Motion and being fully advised in the premises and for good cause shown, finds that the motion should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that CITICORP MORTGAGE, INC., formerly Citicorp Homeowners, Inc., be and it is hereby dismissed as a party to this suit.

S/ THOMAS R. BRETT
JUDGE

c:\hardord

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

BAUCOM CONCRETE CONSTRUCTION, INC., an Oklahoma corporation,

Plaintiff,

vs.

Case No. 89-1077-B

FLEMING BUILDING COMPANY, INCORPORATED, an Oklahoma corporation, et al.,

Defendants,

vs.

ELEVENTH AND MINGO DEVELOPMENT COMPANY, an Oklahoma general partnership, et al.,

Third-Party Defendants.

FLEMING BUILDING COMPANY, INC., an Oklahoma corporation,

Plaintiff,

vs.

ELEVENTH AND MINGO DEVELOPMENT COMPANY, an Oklahoma corporation, et al.,

Defendants.

GLASSER CONSTRUCTION COMPANY, an Oklahoma corporation,

Plaintiff,

vs.

ELEVENTH AND MINGO DEVELOPMENT COMPANY; and FLEMING BUILDING COMPANY, INC.,

Defendants.

FILED
AUG 2 1990
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

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Order
U.S. District Court, Northern District, OK
[11th & Mingo] Case No. 89-1077-B

On Motion of Cimarron Federal Savings and Loan Association, Third Party Petitioner herein, its claims against Third Party Defendant are dismissed without prejudice.

IT IS SO ORDERED this 2nd day of August, 1990.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LOCAL AMERICA BANK OF TULSA, F.S.B.,

Plaintiff,

vs.

R & S INCOME PROPERTIES, a, limited partnership; et al.,

Defendants.

and

LOCAL AMERICA BANK OF TULSA, F.S.B.,

Plaintiff,

vs.

LYNN APARTMENTS, LTD., a limited partnership; et al.,

Defendants.

and

LOCAL AMERICA BANK OF TULSA, F.S.B.,

Plaintiff,

vs.

CRESTHILL PROPERTIES, an Oklahoma partnership; et al.,

Defendants.

Case No. 89-C-744-C
(Consolidated)

FILED
AUG 1 1990
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE

This matter comes on before me, the undersigned Judge, on the 31st day of July, 1990, pursuant to the Joint Motion of the Plaintiff, Local America Bank of Tulsa, F.S.B., and the Defendants, R & S Income Properties, a limited partnership, Lynn Apartments, Ltd., a limited partnership; Cresthill Properties, an

Oklahoma partnership.; Steve B. Silverstein, a/k/a Steven B. Silverstein and Roxie J. Silverstein, a/k/a Roxanne J. Silverstein, husband and wife, to dismiss the above-captioned action with prejudice. For good cause shown, the Court finds that the Joint Motion should be granted.

IT IS THEREFORE ORDERED that the cross-claims asserted by the Defendants in the above-captioned consolidated action are hereby dismissed with prejudice.

District Court Judge for the
Northern District of Oklahoma

entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 1 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ALBERT EQUIPMENT COMPANY, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	90-C-0211-C
	)	
ESCOE-GREEN, INC., et al	)	
	)	
Defendant.	)	

ORDER

Following hearing on June 4, 1990, the undersigned directed Defendant to file any application for fees and costs accrued by reason of Plaintiff's filing and subsequent dismissal before this court. The issue is governed by Rule 41(a)(2), Fed.R.Civ.P. which provides in part that "an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper."

Here, Plaintiff moves to dismiss, having filed the action contrary to the requisites of diversity jurisdiction, lacking a claim in excess of $50,000.00. Under such circumstances, the undersigned finds it appropriate to assess reasonable fees and costs, made necessary by reason of the improper filing.

Defendant filed its Application to Tax Costs and Attorney Fees (docket #4) on June 7, 1990, and the matter was heard July 23, 1990. Following a recess in the hearing, counsel for both parties announced that they had reached an agreed-upon settlement of Defendant's Application, as follows:

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1. Attorney fees are to be paid to Defendant by Plaintiff in the amount of $400.00 and;

2. Costs are to be paid to Defendant by Plaintiff in the amount of $23.20.

Upon review, the United States Magistrate finds the agreement of the parties to be reasonable in light of the time expended by counsel and the nature of undertaking made necessary by Plaintiff's improper filing in this forum. Accordingly, attorney's fees are awarded to Defendant, as agreed, in the amount of $400.00, together with costs in the amount of $23.20.

The United States Magistrate further finds that same are to be paid on or before December 1, 1990, unless this date is extended by application of the parties, or, unless the case otherwise settles before this date.

SO ORDERED THIS 1ST day of August, 1990.

JEFFREY S. WOLFE
UNITED STATES MAGISTRATE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	89-C-291-C
	)	
ONE 1986 TOYOTA CRESSIDA, VIN JT2MX73E8G0059006,	)	
	)	
	)	
Defendant.	)	

FILED

AUG 1 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

JUDGMENT AND OPINION

This case came on by consent of the parties before the United States Magistrate for non-jury trial on April 23, 1990, Plaintiff represented by its Assistant United States Attorney Ms. Catherine Depew, and Claimant represented by her attorney, Mr. John Echols. Following review of the testimony and other evidence, including exhibits of record, the United States Magistrate makes the following findings of fact and conclusions of law.

This is an action under 21 U.S.C. §881(a)(4) for forfeiture of a 1986 Toyota Cressida automobile (VIN JT2MX73E8G0059006), allegedly used or intended to be used to facilitate the transportation of a controlled substance. The Toyota's owner, Marina Garcia, seeks return of the vehicle, and appears before the Court as Claimant.

The Facts

In essence, the story begins in Ft. Lauderdale and ends in Atlanta, Georgia. On October 24, 1988, Mario Garcia (Claimant's husband) drove his wife's Toyota, to Tulsa International Airport and from there flew to Ft. Lauderdale, Florida. The reason for his trip

to Florida is unknown.[1] The next day, on October 25, 1988, Mario Garcia began the return leg to Tulsa; paying cash for a ticket on Delta Airlines Flight 117 from Fort Lauderdale. Flight 117 was scheduled to connect in Atlanta and fly directly from there to Tulsa. Garcia never arrived in Tulsa.

Instead, the following sequence of events occurred. Mario Garcia's "profile" fit that of a "drug courier" and he was stopped and questioned while on the ground at the airport in Atlanta. At the time of his stop he was carrying a small locked bag later found to contain three (3) kilograms of 86% pure cocaine.[2] While Mario Garcia was being arrested in Atlanta, Marina Garcia's Toyota automobile was still parked at the Tulsa International Airport, where Mario had left it the previous day.[3] The Government seized the vehicle at Tulsa International Airport and initiated this action for civil forfeiture under §881(a)(4). The issue now is whether the evidence is sufficient to support an order of forfeiture.

The Law

Title 21 U.S.C § 881(a)(4), the forfeiture statute invoked here, provides:

> **The following shall be subject to forfeiture to the United States and no property right shall exist in them:**
>
> **(4) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (1) or (2)...**

In a forfeiture action, such as this, a unique shifting of burdens is employed at trial.

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[1] No evidence was introduced regarding Garcia's stated intention in going to Florida. The Government presumes that his intention, at the time he left Tulsa, was drug-related since he was later found to have drugs in Atlanta, having come from Ft. Lauderdale.

[2] Garcia was tried in state court in Georgia and found guilty of trafficking in cocaine, receiving a sentence of twenty-five (25) years imprisonment.

[3] Both parties agree, the vehicle at the airport is titled in the name of Marina Garcia, and is acknowledged to be the vehicle primarily used by her.

The Government bears the initial burden of going forward. To meet its burden, the Government need not prove a *prima facie* satisfaction of the subsection (a)(4) elements. Rather, it need only establish "probable cause" to believe the vehicle was used as described in subsection (a)(4). *United States v. One 1984 Cadillac*, 888 F.2d 1133, 1137 (6th Cir. 1989). "Probable cause" in a forfeiture action has been held to be the "same standard employed to test searches and seizures...defined as a reasonable ground for belief of guilt, supported by less than *prima facie* proof but more than mere suspicion." (*Id.* at p. 1135); *United States v. One 1980 Red Ferrari*, 875 F.2d 186, 188 (8th Cir. 1989).[4] Once this initial showing has been concluded, the burden shifts to the claimant to demonstrate by a preponderance of the evidence that the property is not subject to forfeiture; or, that a defense to forfeiture exists. *Id.* One such defense is that of the "innocent owner".[5]

This case focuses, however, on the Government's presentation; Claimant offering no evidence, arguing instead, that the Government never met its initial burden.[6] Under §881(a)(4), the Government may show that the subject vehicle either actually transported the illicit drugs or that the vehicle was intended to, or in some manner did "facilitate" the underlying criminal activity. Here, the Government must argue that the vehicle "facilitated"

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[4] "Probable cause" is not established by merely rote application of facts to a set formula: "Probable cause must be judged not with clinical detachment but with a common sense view to the realities of normal life." *United States v. Premises Known as 3639-2nd Street, N.E.*, 869 F.2d 1093, 1097 (8th Cir. 1989).

[5] *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663 (1974); *United States v. One 1983 Homemade Vessel Named "Barracuda"*, 858 F.2d 643, 646 (11th Cir. 1988)(the three pronged test of innocent ownership is: (1) whether the owner was involved in the wrongful activity; (2) whether the owner was aware of the wrongful activity; and (3) whether the owner had done all that reasonably could be expected to prevent the proscribed use of her property -- it is not enough that the owner prove that she was entirely free of any involvement or knowledge of the unlawful conduct).

[6] Although Maria did not testify, Maria's title ownership was stipulated to by the Government. Merely showing ownership, however, is not enough to withstand forfeiture where the Government has shown probable cause for the forfeiture. *See*, n. 5, *supra.*, and cases cited therein.

the underlying criminal activity, because Garcia never reached the car, and neither did the cocaine.

Several courts have determined that the actual vehicle used to ferry criminals to a drug sale satisfies the "facilitation" element of §881(a)(4).[7] However, the question of whether forfeiture is mandated where, as here, the vehicle is not actually used, is a question of first impression. More particularly, no court has decided the specific question of whether a vehicle is "substantially connected" to a transaction when it neither transports the actors nor the drugs.[8] The Government argues inferentially that because the vehicle was parked at the airport, it was intended to be used as the last of a "string" of vehicles to transport Garcia (a drug peddler) away from the airport, having conducted drug business elsewhere.[9]

Discussion

The "facilitation" language of §881(a)(4) is arguably broad enough to work a forfeiture where only the barest logical thread connects a vehicle to a drug transaction. Specifically, §881(a)(4) provides for forfeiture of motor vehicles used or intended to be

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[7] *E.g., United States v. 1966 Beechcraft Aircraft Model King Air*, 777 F.2d 947 (4th Cir. 1985)("We hold that the use of an airplane or other vehicle or vessel to transport conspirators to the scene of a drug sale subjects that conveyance to forfeiture under 21 U.S.C. §881(a)(4)"); *United States v. One 1979 Porsche Coupe*, 709 F.2d 1424 (11th Cir. 1983)(*per curiam*)("The subject vehicle in this case was used to transport the 'pivotal figure in the transaction' several hundred miles to the precise location at which the attempted purchase took place"); *See also, United States v. $39,000 in Canadian Currency*, 801 F.2d 1210, n. 10 (10th Cir. 1986)(reviewing holdings from other circuits on whether a vehicle's "facilitation" triggers forfeiture under §881(a)(4)).

[8] Typically, the vehicle either transports the actors, the drugs, or both. (*See*, n. 18-19 *infra*.) For example, in the recent case of *United States v. One 1987 Ford F-350 4x4 Pickup*, Case No. 88-4253-R, slip op. (D.Kan. May 9, 1990)(1990 U.S. Dist. LEXIS 6836), the court found a truck "facilitated" the sale or possession of drugs where it carried a possible buyer to a motel where he could inspect, smoke, and negotiate the terms of a proposed purchase, although the would-be purchaser never delivered the purchase money.)

[9] Thus, "facilitating" the transaction.

used "in any manner to facilitate the transportation, sale, receipt, possession, or concealment of" illicit narcotics. The terms "in any manner" and "facilitate" are not otherwise defined or limited by the statute. As a result, there are no standards which guide the Government in conducting forfeiture actions such as the one now before the Court. A literal application of the statute could conceivably lead to an unsensible and unjust result; i.e., forfeiture of an automobile otherwise only remotely, if in reality at all, connected with a drug transaction. To avoid such a result, definition must be given the terms "in any manner" and "facilitate." Given the lack of definition in the statute, the court must turn to the legislative history of subsections (a)(4) and (a)(6), which employ identical language.[10]

"Substantial Connection" Standard

Several courts, interpreting the term "facilitate" as used in §881(a)(4) have substituted the phrase "substantial connection" for the "facilitation" language, drawing the phrase from the legislative history of §881(a)(6).[11] These courts hold that "property would be forfeited only if there is a substantial connection between the property and the underlying criminal activity..." *See, e.g., United States v. One 1986 Nissan Maxima GL,* 895 F.2d 1063, 1064 (5th Cir. 1990); *United States v. Schifferli,* 895 F.2d 987, 989 (4th Cir.

[10] *United States v. Campos Serano,* 404 U.S. 293 (1971); *Pierce v. Van Dusen,*78 F.693, 696 (1897) ("While the intention of the legislature must be ascertained from the words used to express it, the manifest reason and obvious purpose of the law should not be sacrificed to a literal interpretation of such words.")

[11] *Legislative History,* Psychotropic Substances Act of 1978, Joint Explanatory Statement of Titles I and II, 95th Cong. 2d Sess. 8, *reprinted in* 1978 U.S. Code Cong. & Admin. News 9496, 9518, 9522; *contra, United States v. 1964 Beechcraft Baron Aircraft,* 691 F.2d 725, 727-28 (5th Cir. 1982)*(per curiam), cert denied,* 461 U.S. 914 (1983)("substantial connection" test under §881(a)(6) not applicable to forfeitures under §881(a)(4)).

1990); *United States v. One 1976 Ford F-150 Pick-Up*, 769 F.2d 525, 527 (8th Cir. 1985); *United States v. 1966 Beechcraft Aircraft Model King Air*, 777 F.2d 947, 953 (4th Cir. 1985); *United States v. One 1979 Porsche Coupe*, 709 F.2d 1424, 1427 (11th Cir. 1983); and *United States v. One 1972 Chevrolet Corvette*, 625 F.2d 1026, 1029 (1st Cir. 1980).

Although the §881(a)(6) phrase, "substantial connection", does not appear in the limited legislative history of §881(a)(4), the suggestion that there be something closer than a "tenuous connection" between a vehicle and underlying drug-related activity is unmistakable. The term "substantial connection" is, however, found in the official legislative history to §881(a)(6), wherein the comment is made,

> Due to the penal nature of forfeiture statutes, it is the intent of these provisions that property would be forfeited only if there is a substantial connection between the property and the underlying criminal activity which the statute seeks to prevent....Similarly, any moneys [etc.]...would be forfeitable only if they had some substantial connection to, or were instrumental in, the commission of the underlying criminal activity."[12]

The legislative history behind the original enactment of §881(a)(4) is more narrowly drawn that of §881(a)(6), stating: "Also subject to forfeiture are all conveyances used, or intended for use, to transport or conceal such violative property."[13] Thus, under §881(a)(4), only where vehicles are in fact used or intended to be used, did the framers contemplate forfeiture. It seems clear then, that the broad "facilitation" language was not meant to be all-encompassing. Rather, forfeiture was to be limited to plainly discernable

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[12] *Legislative History*, Psychotropic Substances Act of 1978, Joint Explanatory Statement of Titles I and II, 95th Cong. 2d Sess. 8, *reprinted in* 1978 U.S. Code Cong. & Admin. News 9496, 9518, 9522. (Emphasis added.)

[13] *Legislative History*, Comprehensive Drug Abuse Prevention and Control Act of 1970, House Report, *reprinted in*, 1970 U.S. Code Cong. & Admin. News 4566, 4623. (Emphasis added.)

"intent to use" or "use" itself. Such, however, were not the final words incorporated in the statute, it being conditioned, or, as the Government urges, broadened, by the terms "in any manner" and "facilitated".

Notwithstanding the foregoing, a compelling reason for limiting the theoretical reach of §881(a)(4) is found in Congress' statement of what was perceived to be the present state of forfeiture law, set forth in the legislative history of the 1984 amendments:

> Under current law, if a person uses a boat or car to transport narcotics or uses equipment to manufacture dangerous drugs, his use of the property renders its subject to civil forfeiture.[14]

The legislative history of the 1984 amendment does not, therefore, depict so long a reach as is contemplated by the Government in this case. Vehicles which are only tenuously connected to a drug transaction are not within the ambit of those intended to be forfeited to the Government.

Thus, upon review of the foregoing, notwithstanding the otherwise broad language of the statute itself, the undersigned finds it is reasonable to limit the "facilitation"[15] language of the statute in accord with the legislative history. To do otherwise is to leave forfeiture to whimsy, a result clearly not intended by Congress. The "substantial connection" standard reasonably limits the effect of the facilitation language and implements the limits intended by Congress.

Therefore, because of the important property rights at stake (deprivation of property

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[14] *Legislative History*, Comprehensive Crime Control Act of 1984, House Report, *reprinted in*, 1984 U.S. Code Cong. & Admin. News 3182, 3378. (Emphasis added.)

[15] In *United States v. One 1976 Cessna Model 210L Aircraft*, 890 F.2d 77, n.3 (8th Cir. 1989), the Eighth Circuit employed the following definition of "facilitate": "A vehicle 'facilitates' illegal activity under section 881 if it 'makes easy or less difficult' the activity."

without compensation), and given that forfeitures are not favored,[16] and because the legislative history underlying §881(a)(4) suggests that forfeiture lies only where a vehicle is actually used or intended to be used to transport or conceal drugs, the Court finds that the "substantial connection" standard is appropriately employed to interpret the "facilitation" concept set forth in subsection (a)(4). Thus, to set forth a legally sufficient case, the Government must show, by a preponderance of the evidence, a "substantial connection" between the underlying criminal conduct and the vehicle subject of the forfeiture action.

"Substantial Connection" Applied

To determine whether the Government would succeed in a forfeiture action when alleging that a vehicle has "facilitated" a drug transaction requires a fact-intensive review.[17] Other courts have found that a vehicle carrying a co-conspirator directly to the site of an illegal transaction is directly connected to a sale, thus facilitating the sale, so as to support a forfeiture under §881(a)(4).[18] Although the connection is considerably less

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[16] *United States v. One 1980 Red Ferrari*, 875 F.2d 186, 188 (8th Cir. 1989).

[17] One can imagine a scenario involving several vehicles used *in seriatim* to physically transport a drug buyer to or away from a point of sale. A BMW automobile carries him to a public airport where a private Lear Jet then flies him to a remote airstrip, at which 4WD Jeep awaits his final leg to a secluded hideout -- or perhaps a corporate retreat facility. A meeting takes place, money is paid, and it is agreed that delivery of the drugs will take place two days hence in the buyer's own city. A Land Rover takes the buyer back to the airstrip where a Cessna aircraft flies him back to the public airport, and the BMW, which transports him back to his condominium -- where the BMW is returned to his neighbor (the BMW's unsuspecting owner). It can be argued that each vehicle (the BMW, the Lear Jet, the 4WD Jeep, the Land Rover, and the Cessna), in some "manner" was used "to facilitate the ... sale" and that each vehicle should be subject to forfeiture under §881(a)(4), especially if the meeting was planned in advance.

On the other hand, if the idea of purchasing drugs was first conceived at the retreat facility, it would strain the language to conclude that any of the vehicles "facilitate[d] the transportation, sale, receipt, possession, or concealment, of the" drugs.

[18] *E.g., United States v. One 1984 Cadillac*, 888 F.2d 1133 (6th Cir. 1989); *United States v. One 1979 Porsche Coupe*, 709 F.2d 1424 (11th Cir. 1983)(car used to take "pivotal figure" several hundred miles to location of attempted transaction held forfeitable although it carried neither drugs nor money).

direct, it has also been held that an airplane carrying a would-be buyer to a rented automobile for the final leg of a trip to the transaction point is still "substantially connected", and thereby forfeitable through §881(a)(4).[19]

Given the facts of this case, however, the Government goes beyond the outer perimeter of the "substantial connection" standard here found to be implicit in §881(a)(4).[20] Forfeiture of the car that took Garcia to the plane, that flew to Ft. Lauderdale, where he spent the night before getting on the plane to fly to Atlanta, where he was caught holding drugs with a plane ticket to Tulsa, where the seized car sat parked, is inappropriate given the remote circumstances. The connection between the car in Tulsa, and carrying drugs in the Atlanta airport is, at best, tenuous and not at all "substantial". Were there direct evidence that Mario Garcia left for Ft. Lauderdale intending to conduct drug business, the Toyota might be forfeitable. There is, however, no such evidence.

Were there direct evidence of Garcia's intent to use the vehicle to carry his cocaine cache away from the Tulsa airport, the forfeitability question might similarly be answered differently. Again, there is no such evidence.

Were there direct evidence of Garcia's intent to use the Toyota to spirit him away from a drug drop-off rendezvous, the result would be different.[21] No such evidence was

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[19] *See, United States v. 1966 Beechcraft Aircraft Model King Air*, 777 F.2d 947 (4th Cir. 1985)(Government did not attempt to seize and forfeit the automobile used to initially bring the purchaser to the airport where the forfeited aircraft waited).

[20] *E.g., United States v. One 1980 Bertram 58' Motor Yacht*, 876 F.2d 884, 887 (11th Cir. 1989). *See also, United States v. One 1987 Ford F-350 4X4 Pickup*, Case No. 88-4253-R slip op. (D.Kan. May 9, 1990)(1990 U.S. Dist. LEXIS 6836)(discussing cases following broad and narrow readings of §881(a)(4)).

[21] "It is the state of mind of the criminal with respect to the property sought to be forfeited which is determinative, not whether the property is actually used to execute the criminal intentions." *United States v. One 1980 Bertram 58' Motor Yacht*, 876 F.2d 884, 888 (11th Cir. 1989).

introduced.

Were there even evidence that Garcia intended to board the flight from Atlanta to Tulsa with his bag, and thereafter leave the Tulsa airport with it in his possession, the result may be different. But here, where the Government offers only the circumstantial evidence that Garcia was carrying drugs in Atlanta, and holding a ticket to fly home, to Tulsa International Airport, where the Toyota was yet parked, the leap of faith is too great to then presume that Garcia would use the car still carrying the drugs.

The simple fact is, Garcia never got to Tulsa, with or without drugs. He could have passed the drugs on to another before boarding in Atlanta, or, before leaving Tulsa International Airport.[22] The Government offered no evidence of Garcia's intent, relying instead on logical inferences of supposed guilty conduct. In sum, inferential evidence is all that is offered to bridge this gap. Such a bridge absent more, will not support the weight of this forfeiture action. [23]

Conclusion

Accordingly, the Court concludes that the Government has not met its initial burden,

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[22] Perhaps ironically, the only evidence the Government attempted to present on this question was the incredible hearsay testimony, by the Government's agent. The agent testified that Garcia's explanation, at the time of his arrest for his possession of the gym bag was that he had been paid to leave it at a public locker in the Tulsa airport. Thus, if true, the car was never intended as a vehicle to transport drugs. In any event, any argument that the car was used to transport Garcia to the airport where he intended to fly to Ft. Lauderdale to complete a drug deal, thus subjecting the car to forfeiture, is negated by the fact that no evidence was adduced. Instead, the simple facts are that Garcia was caught in the Atlanta airport. The drug related events (much less intentions) before hand are never explained.

[23] On first reading, it may seem that the court is simply drawing a line in the sand, holding "the car parked at the airport" will never be substantially connected to a drug transaction, thus, forfeitable. This misreads the case. Were the Government able to prove by enough evidence, direct or circumstantial that a vehicle played a part in transporting a drug buyer to or away from a transaction point, even if it was the last vehicular link in a chain of transportation modalities, the Government would be entitled to forfeiture. The line drawn here, separates Garcia's car from the Government because of the lack of any evidence of Garcia's plan for future use of the car. In other words, where the Government cannot prove, by direct or credible circumstantial evidence, by a preponderance of such evidence, that a waiting vehicle was to be used to carry a drug criminal away to safety (or otherwise), inferential evidence, if not mere argument, will not carry the probable-cause burden which the Government must first meet.

failing to show probable cause. Judgment is entered for Claimant and the Government is ordered to relinquish to her the defendant vehicle, and to do so within thirty (30) days hereof.

SO ORDERED THIS 31ST day of July, 1990.

JEFFREY S. WOLFE
UNITED STATES MAGISTRATE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. RAYMOND D. MANTHA a/k/a RAYMOND DOUGLAS MANTHA; PHYLLIS M. MANTHA a/k/a PHYLLIS MARIE MANTHA a/k/a PHYLLIS DOVER a/k/a PHYLLIS CRAFTON a/k/a PHYLLIS JACKSON; COUNTY TREASURER, Mayes County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Mayes County, Oklahoma, Defendants.	)	CIVIL ACTION NO. 89-C-1026-C

FILED
AUG 1 1990
Jack C. Silver, Clerk
U. S. DISTRICT COURT

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 31st day of July, 1990. The Plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney; the Defendants, County Treasurer, Mayes County, Oklahoma, and Board of County Commissioners, Mayes County, Oklahoma, appear by Barry Farbro, Assistant District Attorney, Mayes County, Oklahoma; the Defendant, Raymond D. Mantha a/k/a Raymond Douglas Mantha, appears by his attorney Rockne E. Porter; and the Defendant, Phyllis M. Mantha a/k/a Phyllis Marie Mantha a/k/a Phyllis Dover a/k/a Phyllis Crafton a/k/a Phyllis Jackson, appears not, having previously filed her Disclaimer.

The Court being fully advised and having examined the file herein finds that the Defendant, Raymond D. Mantha a/k/a Raymond Douglas Mantha, acknowledged receipt of Summons and

NOTE: THIS ORDER IS TO BE MAILED BY ... PROPER ... UPON ... RECEIPT.

Complaint; that the Defendant, Phyllis M. Mantha a/k/a Phyllis Marie Mantha a/k/a Phyllis Dover a/k/a Phyllis Crafton a/k/a Phyllis Jackson, acknowledged receipt of Summons and Complaint on December 28, 1989; that Defendant, County Treasurer, Mayes County, Oklahoma, acknowledged receipt of Summons and Complaint on December 15, 1989; and that Defendant, Board of County Commissioners, Mayes County, Oklahoma, acknowledged receipt of Summons and Complaint on December 14, 1989.

It appears that the Defendants, County Treasurer, Mayes County, Oklahoma, and Board of County Commissioners, Mayes County, Oklahoma, filed their Answer and Cross-Petition on December 21, 1989; that the Defendant, Raymond D. Mantha a/k/a Raymond Douglas Mantha, filed his Answer on January 11, 1990; and that the Defendant, Phyllis M. Mantha a/k/a Phyllis Marie Mantha a/k/a Phyllis Dover a/k/a Phyllis Crafton a/k/a Phyllis Jackson, filed her Disclaimer on January 5, 1990.

The Court further finds that on January 18, 1989, Phyllis Marie Mantha a/k/a Phyllis Dover a/k/a Phyllis Crafton a/k/a Phyllis Jackson filed her voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 89-00090-W. On August 16, 1989, the United States Bankruptcy Court for the Northern District of Oklahoma entered its order modifying the automatic stay afforded the debtor by 11 U.S.C. § 362 and directing abandonment of the real property subject to this foreclosure action and which is described below.

The Court further finds that on January 20, 1989, Raymond Douglas Mantha filed his voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 89-00124-W. On February 5, 1990, the United States Bankruptcy Court for the Northern District of Oklahoma entered its order modifying the automatic stay afforded the debtor by 11 U.S.C. § 362 and directing abandonment of the real property subject to this foreclosure action and which is described below.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Mayes County, Oklahoma, within the Northern Judicial District of Oklahoma:

> The East Half of the South East Quarter of the South West Quarter of Section Twenty-eight (28), Township Twenty (20) North, and Range Twenty (20) East, of the Indian Base and Meridian, containing Twenty (20) Acres, more or less.

The Court further finds that on February 8, 1985, Raymond D. Mantha and Phyllis M. Mantha executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of $60,000.00, payable in monthly installments, with interest thereon at the rate of twelve and one-half percent (12.5%) per annum.

The Court further finds that as security for the payment of the above-described note, Raymond D. Mantha and Phyllis M. Mantha executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated February 8, 1985, covering the above-described property. Said mortgage was recorded on February 8, 1985, in Book 639, Page 467, in the records of Mayes County, Oklahoma.

The Court further finds that the Defendants, Raymond D. Mantha a/k/a Raymond Douglas Mantha and Phyllis M. Mantha a/k/a Phyllis Marie Mantha a/k/a Phyllis Dover a/k/a Phyllis Crafton a/k/a Phyllis Jackson, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Raymond D. Mantha a/k/a Raymond Douglas Mantha and Phyllis M. Mantha a/k/a Phyllis Marie Mantha a/k/a Phyllis Dover a/k/a Phyllis Crafton a/k/a Phyllis Jackson, became indebted to the Plaintiff in the principal sum of $59,288.86, plus interest at the rate of 12.5 percent per annum from May 1, 1988 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of $28.00 ($20.00 docket fees and $8.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Mayes County, Oklahoma, have a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of

$270.28, plus penalties and interest, for the year 1989. Said lien is superior to the interest of the Plaintiff, United States of America.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, Raymond D. Mantha a/k/a Raymond Douglas Mantha and Phyllis M. Mantha a/k/a Phyllis Marie Mantha a/k/a Phyllis Dover a/k/a Phyllis Crafton a/k/a Phyllis Jackson, in the principal sum of $59,288.86, plus interest at the rate of 12.5 percent per annum from May 1, 1988 until judgment, plus interest thereafter at the current legal rate of 7.88 percent per annum until paid, plus the costs of this action in the amount of $28.00 ($20.00 docket fees and $8.00 fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums of the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Mayes County, Oklahoma, have and recover judgment in rem in the amount of $270.28, plus penalties and interest for ad valorem taxes for the year 1989, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of Defendants, County Treasurer and Board of County Commissioners, Mayes County, Oklahoma, in the amount of $270.28, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

In payment of the judgment rendered herein in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

/Signed/ H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney

NANCY NESBITT BLEVINS, OBA #6634
Assistant United States Attorney

ROCKNE E. PORTER, OBA #10930
Attorney for Defendant,
Raymond D. Mantha
a/k/a Raymond Douglas Mantha

BARRY FARBRO, OBA #12285
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Mayes County, Oklahoma

Judgment of Foreclosure
Civil Action No. 89-C-1026-C

NNB/css

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 1 1990

Jack C. Silver, Clerk

PHOENIX FEDERAL SAVINGS AND LOAN ASSOCIATION, Plaintiff, vs. ROBERT R. AUSTIN and PAULINE HINKLE AUSTIN, husband and wife; JOYCE EILEEN EATON; LLOYD K. SCHULTHEIS; WILLIAM L. BENKER; LAKELAND REAL ESTATE DEVELOPMENT, INC.; JAMES M. HENRY and KAREIN HENRY a/k/a KAREIN L. HENRY, husband and wife; QUINTON DODD and VICKIE E. DODD, husband and wife, Defendants.	Case No. 89-C-759-C (Consolidated with the following cases into Case No. 89-C-753-C: Case No. 89-C-754-C; Case No. 89-C-755-C; Case No. 89-C-756-C; and Case No. 89-C-758-C)

[redacted] JUDGMENT

Now before this Court is the Motion for Summary Judgment of the Substituted Party-Plaintiff, Cimarron Federal Savings and Loan Association ("Cimarron"). Having reviewed the Report and Recommendation of U.S. Magistrate, the pleadings, affidavits and applicable law, the Court finds as follows:

I.

PROCEDURAL HISTORY

1. The Plaintiff commenced this case in the District Court of Mayes County Oklahoma on January 22, 1988.

2. The Defendants, Robert R. Austin and Pauline Hinkle Austin, husband and wife, Joyce Eileen Eaton, now Joyce Eileen

Kennedy, Lloyd K. Schultheis and William M. Benker (the "Responding Defendants"), filed an Answer, Counterclaim and Cross-Claim alleging as affirmative defenses and Counterclaims certain wrong doings on the part of Phoenix Federal Savings and Loan Association ("Phoenix") and other defendants. The alleged wrong doings may generally be categorized as fraud in the inducement, failure of consideration, illegality, and breach of oral agreements.

3. On August 31, 1988, Phoenix was declared insolvent and the Federal Savings and Loan Insurance Corporation ("FSLIC") was appointed its receiver.

4. On August 31, 1988, the FSLIC, as Receiver of Phoenix transferred substantially all of the deposits, assets and secured liabilities of Phoenix to Cimarron Federal Savings and Loan Association ("Cimarron"), but reserved unto itself, among other things, any known or unknown claim, demand, cause of action, or judgment against Phoenix.

5. Pursuant to an Order of the District Court of Mayes County, Oklahoma entered December 12, 1988, Cimarron was substituted for Phoenix as the Party-Plaintiff.

6. On September 1, 1989, the FSLIC as Receiver of Phoenix was, by Order of the District Court of Mayes County, Oklahoma permitted to intervene as the real party in interest with respect to the Counterclaims of the Defendants, including those of the Responding Defendants.

7. Pursuant to the "Financial Institutions Reform, Recovery and Enforcement Act of 1989", the Federal Deposit Insurance Corporation, as Manager of the Federal Savings and Loan Insurance Corporation Resolution Fund, succeeded to all powers and duties of the FSLIC as Receiver of Phoenix (hereinafter the "FDIC-Receiver").

8. On September 14, 1989, the FDIC-Receiver removed this case to this court pursuant to 12 U.S.C. §1411.

9. This action was consolidated into Case No. 89-C-753-C by Order of this Court.

10. The FDIC-Receiver moved this Court to dismiss this action on October 23, 1989.

11. On November 22, 1989, the Responding Defendants filed their Response to the FDIC-Receiver's Motion to Dismiss.

12. On January 2, 1990, the substituted Party-Plaintiff, Cimarron, filed its Motion for Summary Judgment.

13. On February 6, 1990, the Responding Defendants filed their Response to Cimarron's Motion for Summary Judgment.

14. Cimarron filed, pursuant to Order of this Court granting leave to do so, its Reply to the Defendant's Response.

II.

RELATIONSHIP OF CLAIMS OF DEFENDANTS AGAINST THE FDIC-RECEIVER AND CIMARRON.

15. The affirmative defenses and counterclaims of the Defendants, including the Responding Defendants, derive from a common nucleus of operative facts.

16. The Motion to Dismiss of the FDIC-Receiver and Motion for Summary Judgment of Cimarron, both being at issue, are decided contemporaneously. See Order entered April 16, 1990, which sustains the FDIC-Receiver's Motion to Dismiss and Cimarron's Motion for Summary Judgment and affirms the Report and Recommendation of the Magistrate.

17. After considering the strong federal policy in favor of supporting the FDIC and FSLIC in their roles as protectors of the national financial system, the tests set forth in United Mine Workers v. Gibbs, 383 U.S. 715 (1966) and Jones v. Intermountain Power, 794 F.2d 546 (10th Cir. 1986), the values of judicial economy, fairness to the litigants, convenience and comity finds that Cimarron's state-law claims for judgment on its Note and for foreclosure of its Mortgage are pendent to the federal question decided contemporaneously and this Court exercises its discretionary power to decide those claims.

III.

CIMARRON'S CLAIMS FOR JUDGMENT ON ITS NOTES AND FOR FORECLOSURE OF ITS MORTGAGE.

The Court having construed the facts of this case in favor of the Defendants and having drawn all reasonable inferences therefrom in favor of the Defendants finds that there is no substantial controversy as to any material fact and Cimarron is entitled to judgment as a matter of law. The Court further finds and IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Cimarron as a "pass through institution" is entitled to at least the same protections as is the FDIC-Receiver.

2. Cimarron is entitled to at least holder in due course status and the protections afforded to the FDIC-Receiver by the D'Oench Duhme doctrine. Accordingly, the Defendants are estopped to assert the alleged wrong doings of Phoenix as defenses or counterclaims against Cimarron.

3. Cimarron's Motion for Summary Judgment is sustained.

4. The Defendants, Robert R. Austin and Pauline Hinkle Austin, husband and wife, Joyce Eileen Eaton, now Joyce Eileen Kennedy, Lloyd K. Schultheis and William M. Benker, have entered an appearance herein by and through their counsel, Richardson, Meier & Associates, P.C. by Gregory G. Meier.

5. The Defendants, James M. Henry and Karein Henry, a/k/a Karein L. Henry, husband and wife, Lakeland Real Estate Development, Inc., and Quinton R. Dodd and Vickie E. Dodd, husband and wife, have been dismissed from this action without prejudice.

6. Cimarron is the owner and holder of the Notes and Mortgage being sued upon herein.

7. There is due Cimarron upon the Note and Mortgage described in Cimarron's Petition the sum of $135,020.88, together with interest accrued in the sum of $22,987.74 through March 15, 1989 and with interest continuing to accrue at 8.5% per annum, until paid, escrow deficiencies of $3,589.95, late

charges of $508.28 as of December 31, 1987 and all costs of this action accrued and accruing.

8. Cimarron has a valid first lien upon the real estate and premises herein described on Exhibit "A" attached hereto (the "Property") by virtue of the Mortgage executed by the Responding Defendants which is recorded in Book 649 at Page 542 in the records of the County Clerk of Mayes County, Oklahoma.

9. The Defendants, Robert R. Austin and Pauline Hinkle Austin, husband and wife, own an undivided 2/5 interest in the Property. The Defendant, Joyce Eileen Eaton, now Joyce Eileen Kennedy, owns an undivided 1/5 interest in the Property. The Defendant, Lloyd K. Schultheis, owns an undivided 1/5 interest in the Property. The Defendant, William M. Benker, owns an undivided 1/5 interest in the Property.

10. Cimarron does have and recover on its Petition herein judgment in personam against the following Defendants and in the following amounts:

Defendant	Principal	Interest	Escrow Deficiencies/ Late Charges
Robert R. Austin and Pauline Hinkle Austin, husband and wife	$54,008.34	$3,841.19	$ 963.86
Joyce Eileen Eaton, now Joyce Eileen Kennedy	$27,019.41	$2,134.61	$ 644.87

Lloyd K. Schultheis	$27,004.27	$1,920.59	$ 633.92
William M. Benker	$26,988.87	$1,706.69	$ 620.55

all together with interest accruing at the rate of 8.5% per annum, from March 16, 1989, until paid, plus all costs of this action accrued and accruing, including court costs, abstracting expenses and a reasonable attorney's fee in the amount of $5,400.00 (collectively, the "Judgment").

11. The Mortgage herein sued upon provides that appraisement of the premises is waived or not waived at the option of the Mortgagee, and Cimarron has elected to have the real estate sold with appraisement.

12. Pursuant to 28 U.S.C. §2001(a), the Property is to be sold in accordance with the laws governing mortgage foreclosure sales in the State of Oklahoma.

13. The Mortgage of Cimarron be and the same is hereby foreclosed as to the Defendants' interest in the Property and the Defendants' interest in the Property is hereby ordered to be sold to satisfy the Judgment.

14. A special execution and order of sale with appraisement shall issue commanding the Sheriff of Mayes County, Oklahoma, to levy upon the Property and after having same appraised as provided by the laws of the State of Oklahoma, shall proceed to advertise and sell the Property as provided by the laws of the State of Oklahoma, and apply the proceeds arising from the sale as follows:

FIRST: In payment of the costs of the sale and of this action;

SECOND: In payment to the Plaintiff on its Judgment;

THIRD: That the residue, if any, be held to await the further order of this Court.

15. From and after the sale of the Property under and by virtue of this judgment and decree, the Defendants, and each of them, and all persons claiming under them or any of them, be and they are hereby forever barred and foreclosed of and from any and all right, title or interest, estate or equity in and to the Property or any part thereof.

DATED this 31st day of July, 1990.

[Signed] H. Dale Cook

JUDGE OF THE DISTRICT COURT

APPROVED:

Thomas J. Blalock, OBA #11763
KIMBALL, WILSON, WALKER & FERGUSON
301 N. W. 63rd Street, Suite 400
Oklahoma City, Oklahoma 73116
(405) 843-8855
ATTORNEYS FOR SUBSTITUTED PARTY-PLAINTIFF, CIMARRON FEDERAL SAVINGS AND LOAN ASSOCIATION

Gregory C. Meier
RICHARDSON, MEIER & ASSOCIATES, P.C.
5727 South Lewis, Suite 520
Tulsa, Oklahoma 74105

Lakelan4.Jud

EXHIBIT "A"

LOT NUMBERED FOUR (4), IN BLOCK NUMBERED FOUR (4), OF THE VILLAS OF LAKELAND, A SUBDIVISION IN MAYES COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE OFFICIAL SURVEY AND PLAT FILED FOR RECORD IN THE OFFICE OF THE COUNTY CLERK OF SAID COUNTY AND STATE.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 1 1990

Jack C. Silver, Clerk
U. S. DISTRICT COURT

PHOENIX FEDERAL SAVINGS AND LOAN ASSOCIATION,

Plaintiff,

vs.

GLENN DARRELL McGUIRE and BRENDA KAY McGUIRE, husband and wife; ROBERT NEAL McGUIRE and SHARON E. McGUIRE, husband and wife; LAKELAND REAL ESTATE DEVELOPMENT, INC.; JAMES M. HENRY and KAREIN HENRY a/k/a KAREIN L. HENRY, husband and wife; QUINTON DODD and VICKIE E. DODD, husband and wife,

Defendants.

Case No. 89-C-758-C

(Consolidated with the following cases into Case No. 89-C-753-C:

Case No. 89-C-754-C;
Case No. 89-C-755-C;
Case No. 89-C-756-C;
and Case No. 89-C-759-C)

PARTIAL JUDGMENT

Now before this Court is the Motion for Summary Judgment of the Substituted Party-Plaintiff, Cimarron Federal Savings and Loan Association ("Cimarron"). Having reviewed the Report and Recommendation of U.S. Magistrate, the pleadings, affidavits and applicable law, the Court finds as follows:

I.

PROCEDURAL HISTORY

1. The Plaintiff commenced this case in the District Court of Mayes County Oklahoma on January 22, 1988.

2. The Defendants, Robert Neal McGuire and Sharon E. McGuire, husband and wife, and Glenn Darrell McGuire and Brenda Kay McGuire, husband and wife (the "Responding Defendants"),

NOTE: THIS ORDER IS TO BE MAILED
BY MOVANT TO
PRO SE LITIGANT
UPON RECEIPT.

filed an Answer, Counterclaim and Cross-Claim alleging as affirmative defenses and Counterclaims certain wrong doings on the part of Phoenix Federal Savings and Loan Association ("Phoenix") and other defendants. The alleged wrong doings may generally be categorized as fraud in the inducement, failure of consideration, illegality, and breach of oral agreements.

3. On August 31, 1988, Phoenix was declared insolvent and the Federal Savings and Loan Insurance Corporation ("FSLIC") was appointed its receiver.

4. On August 31, 1988, the FSLIC, as Receiver of Phoenix transferred substantially all of the deposits, assets and secured liabilities of Phoenix to Cimarron Federal Savings and Loan Association ("Cimarron"), but reserved unto itself, among other things, any known or unknown claim, demand, cause of action, or judgment against Phoenix.

5. Pursuant to an Order of the District Court of Mayes County, Oklahoma entered December 12, 1988, Cimarron was substituted for Phoenix as the Party-Plaintiff.

6. On September 1, 1989, the FSLIC as Receiver of Phoenix was, by Order of the District Court of Mayes County, Oklahoma permitted to intervene as the real party in interest with respect to the Counterclaims of the Defendants, including those of the Responding Defendants.

7. Pursuant to the "Financial Institutions Reform, Recovery and Enforcement Act of 1989", the Federal Deposit Insurance

Corporation, as Manager of the Federal Savings and Loan Insurance Corporation Resolution Fund, succeeded to all powers and duties of the FSLIC as Receiver of Phoenix (hereinafter the "FDIC-Receiver").

8. On September 14, 1989, the FDIC-Receiver removed this case to this court pursuant to 12 U.S.C. §1411.

9. This action was consolidated into Case No. 89-C-753-C by Order of this Court.

10. The FDIC-Receiver moved this Court to dismiss this action on October 23, 1989.

11. On November 22, 1989, the Responding Defendants filed their Response to the FDIC-Receiver's Motion to Dismiss.

12. On January 2, 1990, the substituted Party-Plaintiff, Cimarron, filed its Motion for Summary Judgment.

13. On February 6, 1990, the Responding Defendants filed their Response to Cimarron's Motion for Summary Judgment.

14. Cimarron filed, pursuant to Order of this Court granting leave to do so, its Reply to the Defendant's Response.

II.

RELATIONSHIP OF CLAIMS OF DEFENDANTS AGAINST THE FDIC-RECEIVER AND CIMARRON.

15. The affirmative defenses and counterclaims of the Defendants, including the Responding Defendants, derive from a common nucleus of operative facts.

16. The Motion to Dismiss of the FDIC-Receiver and Motion for Summary Judgment of Cimarron, both being at issue, are

decided contemporaneously. See Order entered April 16, 1990, which sustains the FDIC-Receiver's Motion to Dismiss and Cimarron's Motion for Summary Judgment and affirms the Report and Recommendation of the Magistrate.

17. After considering the strong federal policy in favor of supporting the FDIC and FSLIC in their roles as protectors of the national financial system, the tests set forth in United Mine Workers v. Gibbs, 383 U.S. 715 (1966) and Jones v. Intermountain Power, 794 F.2d 546 (10th Cir. 1986), the values of judicial economy, fairness to the litigants, convenience and comity finds that Cimarron's state-law claims for judgment on its Note and for foreclosure of its Mortgage are pendent to the federal question decided contemporaneously and this Court exercises its discretionary power to decide those claims.

III.

CIMARRON'S CLAIMS FOR JUDGMENT ON ITS NOTES AND FOR FORECLOSURE OF ITS MORTGAGE.

The Court having construed the facts of this case in favor of the Defendants and having drawn all reasonable inferences therefrom in favor of the Defendants finds that there is no substantial controversy as to any material fact and Cimarron is entitled to judgment as a matter of law. The Court further finds and IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Cimarron as a "pass through institution" is entitled to at least the same protections as is the FDIC-Receiver.

2. Cimarron is entitled to at least holder in due course status and the protections afforded to the FDIC-Receiver by the D'Oench Duhme doctrine. Accordingly, the Defendants are estopped to assert the alleged wrong doings of Phoenix as defenses or counterclaims against Cimarron.

3. Cimarron's Motion for Summary Judgment is sustained.

4. The Defendants, Robert Neal McGuire and Sharon E. McGuire, husband and wife, have entered an appearance herein by and through their counsel, Richardson, Meier & Associates, P.C. by Gregory G. Meier.

5. The Defendants, James M. Henry and Karein Henry, a/k/a Karein L. Henry, husband and wife, Lakeland Real Estate Development, Inc., and Quinton R. Dodd and Vickie E. Dodd, husband and wife, have been dismissed from this action without prejudice.

6. The Defendants, Glenn Darrell McGuire and Brenda Kay McGuire, husband and wife, have previously entered an appearance herein by their attorney, Tony Jack Lyons. Pursuant to Order of this Court, Tony Jack Lyons was permitted to withdraw from representation of Glenn Darrell McGuire and Brenda Kay McGuire and said Defendants have subsequently proceeded pro se.

7. Cimarron is the owner and holder of the Notes and Mortgage being sued upon herein.

8. There is due Cimarron upon the Note and Mortgage described in Cimarron's Petition the sum of $69,773.75, together with

interest accrued in the sum of $12,424.25 through March 15, 1989 and with interest continuing to accrue at 8.5% per annum, until paid, escrow deficiencies of $2,039.60, late charges of $292.08 as of December 31, 1987 and all costs of this action accrued and accruing.

9. Cimarron has a valid first lien upon the real estate and premises herein described on Exhibit "A" attached hereto (the "Property") by virtue of the Mortgage executed by the Responding Defendants and other persons who are not parties to this action which is recorded in Book 648 at Page 743 in the records of the County Clerk of Mayes County, Oklahoma.

10. The Defendants, Robert Neal McGuire and Sharon E. McGuire, husband and wife, own an undivided 2/5 interest in the Property. The Defendants, Glenn Darrell McGuire and Brenda Kay McGuire, husband and wife, own an undivided 1/5 interest in the Property.

11. Cimarron does have and recover on its Petition herein judgment in personam against: the Defendants, Robert Neal McGuire and Sharon E. McGuire, husband and wife, in the sum of $46,515.77 together with accrued interest in the sum of $3,674.83 through March 15, 1989 and with interest continuing to accrue at 8.5% per annum, until paid, escrow deficiencies and late charges of $946.30 as of December 31, 1987; the Defendants, Glenn Darrell McGuire and Brenda Kay McGuire, husband and wife, in the sum of $23,257.98 together with accrued interest in the sum of $1,837.45 through March

15, 1989 and with interest continuing to accrue at 8.5% per annum, until paid, escrow deficiencies and late charges of $653.48 as of December 31, 1987 with interest; and all costs of this action, including a reasonable attorney's fee in the amount of $5,400.00 (collectively, the "Judgment").

12. The Mortgage herein sued upon provides that appraisement of the premises is waived or not waived at the option of the Mortgagee, and Cimarron has elected to have the real estate sold with appraisement.

13. Pursuant to 28 U.S.C. §2001(a), the Property is to be sold in accordance with the laws governing mortgage foreclosure sales in the State of Oklahoma.

14. The Mortgage of Cimarron be and the same is hereby foreclosed as to the Defendants' 3/5 interest in the Property and the Defendants' 3/5 interest in the Property is hereby ordered to be sold to satisfy the Judgment. The Mortgage of Cimarron shall be preserved as to the remaining 2/5 interest in the Property.

15. A special execution and order of sale with appraisement shall issue commanding the Sheriff of Mayes County, Oklahoma, to levy upon the Property and after having same appraised as provided by the laws of the State of Oklahoma, shall proceed to advertise and sell the Property as provided by the laws of the State of Oklahoma, and apply the proceeds arising from the sale as follows:

FIRST: In payment of the costs of the sale and of this action;

SECOND: In payment to the Plaintiff on its Judgment;

THIRD: That the residue, if any, be held to await the further order of this Court.

16. From and after the sale of the Property under and by virtue of this judgment and decree, the Defendants, and each of them, and all persons claiming under them or any of them, be and they are hereby forever barred and foreclosed of and from any and all right, title or interest, estate or equity in and to the Property or any part thereof.

DATED this 31st day of July, 1990.

(Signed) H. Dale Cook

JUDGE OF THE DISTRICT COURT

APPROVED:

Thomas J. Blalock, OBA #11763
KIMBALL, WILSON, WALKER & FERGUSON
301 N. W. 63rd Street, Suite 400
Oklahoma City, Oklahoma 73116
(405) 843-8855
ATTORNEYS FOR SUBSTITUTED PARTY-PLAINTIFF, CIMARRON FEDERAL SAVINGS AND LOAN ASSOCIATION

Gregory S. Meier
RICHARDSON, MEIER & ASSOCIATES, P.C.
5727 South Lewis, Suite 520
Tulsa, Oklahoma 74105

Lakelan3.Jud

EXHIBIT "A"

LOT NUMBERED TWELVE (12), IN BLOCK NUMBERED SIX (6), OF THE VILLAS OF LAKELAND, A SUBDIVISION IN MAYES COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE OFFICIAL SURVEY AND PLAT FILED FOR RECORD IN THE OFFICE OF THE COUNTY CLERK OF SAID COUNTY AND STATE.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

PHOENIX FEDERAL SAVINGS AND LOAN ASSOCIATION,

Plaintiff,

vs.

ROBERT NEAL McGUIRE and SHARON E. McGUIRE, husband and wife; WAYNE WILKINS and SULYN KAY WILKINS, husband and wife; J. ALAN GIBSON and MARY LOUISE GIBSON, husband and wife; JOYCE EILEEN EATON; WILLIAM L. BENKER; LAKELAND REAL ESTATE DEVELOPMENT, INC.; JAMES M. HENRY and KAREIN HENRY a/k/a KAREIN L. HENRY, husband and wife; QUINTON R. DODD and VICKIE E. DODD, husband and wife,

Defendants.

Case No. 89-C-756-C

(Consolidated with the following cases into Case No. 89-C-753-C:

Case No. 89-C-754-C;
Case No. 89-C-755-C;
Case No. 89-C-758-C;
and Case No. 89-C-759-C)

PARTIAL JUDGMENT

Now before this Court is the Motion for Summary Judgment of the Substituted Party-Plaintiff, Cimarron Federal Savings and Loan Association ("Cimarron"). Having reviewed the Report and Recommendation of U.S. Magistrate, the pleadings, affidavits and applicable law, the Court finds as follows:

I.

PROCEDURAL HISTORY

1. The Plaintiff commenced this case in the District Court of Mayes County Oklahoma on January 22, 1988.

2. The Defendants, Robert Neal McGuire and Sharon E. McGuire, husband and wife, Joyce Eileen Eaton, now Kennedy, William L. Benker, Michael Wayne Wilkins and Sulyn Kay Wilkins, husband and wife (the "Wilkins"), J. Alan Gibson and Mary Louise Gibson, husband and wife (the "Gibsons") (the "Responding Defendants"), filed an Answer, Counterclaim and Cross-Claim alleging as affirmative defenses and Counterclaims certain wrong doings on the part of Phoenix Federal Savings and Loan Association ("Phoenix") and other defendants. The alleged wrong doings may generally be categorized as fraud in the inducement, failure of consideration, illegality, and breach of oral agreements.

3. On August 31, 1988, Phoenix was declared insolvent and the Federal Savings and Loan Insurance Corporation ("FSLIC") was appointed its receiver.

4. On August 31, 1988, the FSLIC, as Receiver of Phoenix transferred substantially all of the deposits, assets and secured liabilities of Phoenix to Cimarron Federal Savings and Loan Association ("Cimarron"), but reserved unto itself, among other things, any known or unknown claim, demand, cause of action, or judgment against Phoenix.

5. Pursuant to an Order of the District Court of Mayes County, Oklahoma entered December 12, 1988, Cimarron was substituted for Phoenix as the Party-Plaintiff.

6. On September 1, 1989, the FSLIC as Receiver of Phoenix was, by Order of the District Court of Mayes County, Oklahoma permitted to intervene as the real party in interest with respect to the Counterclaims of the Defendants, including those of the Responding Defendants.

7. Pursuant to the "Financial Institutions Reform, Recovery and Enforcement Act of 1989", the Federal Deposit Insurance Corporation, as Manager of the Federal Savings and Loan Insurance Corporation Resolution Fund, succeeded to all powers and duties of the FSLIC as Receiver of Phoenix (hereinafter the "FDIC-Receiver").

8. On September 14, 1989, the FDIC-Receiver removed this case to this court pursuant to 12 U.S.C. §1411.

9. This action was consolidated into Case No. 89-C-753-C by Order of this Court.

10. The FDIC-Receiver moved this Court to dismiss this action on October 23, 1989.

11. On November 22, 1989, the Responding Defendants, except the Wilkins and Gibsons, filed their Response to the FDIC-Receiver's Motion to Dismiss.

12. On January 2, 1990, the substituted Party-Plaintiff, Cimarron, filed its Motion for Summary Judgment.

13. On February 6, 1990, the Responding Defendants, except the Wilkins and Gibsons, filed their Response to Cimarron's Motion for Summary Judgment.

14. Cimarron filed, pursuant to Order of this Court granting leave to do so, its Reply to the Defendant's Response.

II.

RELATIONSHIP OF CLAIMS OF DEFENDANTS AGAINST THE FDIC-RECEIVER AND CIMARRON.

15. The affirmative defenses and counterclaims of the Defendants, including the Responding Defendants, derive from a common nucleus of operative facts.

16. The Motion to Dismiss of the FDIC-Receiver and Motion for Summary Judgment of Cimarron, both being at issue, are decided contemporaneously. See Order entered April 16, 1990, which sustains the FDIC-Receiver's Motion to Dismiss and Cimarron's Motion for Summary Judgment and affirms the Report and Recommendation of the Magistrate.

17. After considering the strong federal policy in favor of supporting the FDIC and FSLIC in their roles as protectors of the national financial system, the tests set forth in United Mine Workers v. Gibbs, 383 U.S. 715 (1966) and Jones v. Intermountain Power, 794 F.2d 546 (10th Cir. 1986), the values of judicial economy, fairness to the litigants, convenience and comity finds that Cimarron's state-law claims for judgment on its Note and for foreclosure of its Mortgage are pendent to the federal question decided contemporaneously and this Court exercises its discretionary power to decide those claims.

III.

CIMARRON'S CLAIMS FOR JUDGMENT ON ITS NOTES AND FOR FORECLOSURE OF ITS MORTGAGE.

The Court having construed the facts of this case in favor of the Defendants and having drawn all reasonable inferences therefrom in favor of the Defendants finds that there is no substantial controversy as to any material fact and Cimarron is entitled to judgment as a matter of law. The Court further finds and IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Cimarron as a "pass through institution" is entitled to at least the same protections as is the FDIC-Receiver.
2. Cimarron is entitled to at least holder in due course status and the protections afforded to the FDIC-Receiver by the D'Oench Duhme doctrine. Accordingly, the Defendants are estopped to assert the alleged wrong doings of Phoenix as defenses or counterclaims against Cimarron.
3. Cimarron's Motion for Summary Judgment is sustained.
4. The Defendants, Robert Neal McGuire and Sharon E. McGuire, husband and wife, Joyce Eileen Eaton (now Kennedy) and William L. Benker, have entered an appearance herein by and through their counsel, Richardson, Meier & Associates, P.C. by Gregory G. Meier.
5. The Defendants, James M. Henry and Karein Henry, a/k/a Karein L. Henry, husband and wife, Lakeland Real Estate Development, Inc., and Quinton R. Dodd and Vickie E. Dodd, husband and wife, have been dismissed from this action without prejudice.

6. The Defendants, Michael Wayne Wilkins and Sulyn Kay Wilkins, husband and wife, and J. Alan Gibson and Mary Louise Gibson, husband and wife, have previously entered an appearance herein by their attorney, Tony Jack Lyons. Pursuant to Order of this Court, Tony Jack Lyons was permitted to withdraw from representation of the Wilkins and Gibsons and said Defendants have subsequently proceeded pro se.

7. Cimarron is the owner and holder of the Notes and Mortgage being sued upon herein.

8. There is due Cimarron upon the Notes and Mortgage described in Cimarron's Petition the aggregate sum of $130,742.21, together with interest accrued in the sum of $17,957.61 through March 15, 1989 and with interest continuing to accrue at 7.25% per annum, until paid, escrow deficiencies of $3,051.14, late charges of $352.29 as of December 31, 1987 and all costs of this action accrued and accruing.

9. Cimarron has a valid first lien upon the real estate and premises herein described on Exhibit "A" attached hereto (the "Property") by virtue of the Mortgage executed by the Responding Defendants which is recorded in Book 649 at Page 3 in the records of the County Clerk of Mayes County, Oklahoma.

10. The Defendants, Robert Neal McGuire and Sharon E. McGuire, husband and wife, own an undivided 1/5 interest in the Property. The Defendants, Michael Wayne Wilkins and Sulyn Kay Wilkins, husband and wife, own an undivided 1/5 interest

in the Property. The Defendants, J. Alan Gibson and Mary Louise Gibson, husband and wife, own an undivided 1/5 interest in the Property. The Defendant, Joyce Eileen Eaton, now Kennedy, owns an undivided 1/5 interest in the Property. The Defendant, William L. Benker, owns an undivided 1/5 interest in the Property.

11. Cimarron does have and recover on its Petition herein judgment in personam against the following Defendants and in the following amounts:

Defendant	Principal	Interest	Escrow Deficiencies/ Late Charges
Robert Neal McGuire and Sharon E. McGuire, husband and wife	$26,160.73	$1,383.64	$ 509.07
Michael Wayne Wilkins and Sulyn Kay Wilkins, husband and wife	$26,119.82	$1,036.88	$ 442.89
J. Alan Gibson and Mary Louise Gibson, husband and wife	$26,140.34	$1,210.20	$ 284.05
Joyce Eileen Eaton, now Joyce Eileen Kennedy	$26,180.98	$1,557.23	$ 517.16
William M. Benker	$26,140.34	$1,210.20	$ 499.10

all together with interest accruing at the rate of 7.25% per annum, from March 16, 1989, until paid, plus all costs of this action accrued and accruing, including court costs, abstracting expenses and a reasonable attorney's fee in the amount of $5,400.00 (collectively, the "Judgment").

12. The Mortgage herein sued upon provides that appraisement of the premises is waived or not waived at the option of the Mortgagee, and Cimarron has elected to have the real estate sold with appraisement.

13. Pursuant to 28 U.S.C. §2001(a), the Property is to be sold in accordance with the laws governing mortgage foreclosure sales in the State of Oklahoma.

14. The Mortgage of Cimarron be and the same is hereby foreclosed as to the Defendants' interest in the Property and the Defendants' interest in the Property is hereby ordered to be sold to satisfy the Judgment.

15. A special execution and order of sale with appraisement shall issue commanding the Sheriff of Mayes County, Oklahoma, to levy upon the Property and after having same appraised as provided by the laws of the State of Oklahoma, shall proceed to advertise and sell the Property as provided by the laws of the State of Oklahoma, and apply the proceeds arising from the sale as follows:

FIRST: In payment of the costs of the sale and of this action;

SECOND: In payment to the Plaintiff on its Judgment;

THIRD: That the residue, if any, be held to await the further order of this Court.

16. From and after the sale of the Property under and by virtue of this judgment and decree, the Defendants, and each of them, and all persons claiming under them or any of them, be

and they are hereby forever barred and foreclosed of and from any and all right, title or interest, estate or equity in and to the Property or any part thereof.

DATED this 31st day of July, 1990.

(Signed) H. Dale Cook

JUDGE OF THE DISTRICT COURT

APPROVED:

Thomas J. Blalock, OBA #11763
KIMBALL, WILSON, WALKER & FERGUSON
301 N. W. 63rd Street, Suite 400
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(405) 843-8855
ATTORNEYS FOR SUBSTITUTED PARTY-PLAINTIFF, CIMARRON FEDERAL SAVINGS AND LOAN ASSOCIATION

Gregory C. Meier
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5727 South Lewis, Suite 520
Tulsa, Oklahoma 74105

Lakelan5.Jud

EXHIBIT "A"

LOT NUMBERED TWO (2), IN BLOCK NUMBERED FOUR (4), OF THE VILLAS OF LAKELAND, A SUBDIVISION IN MAYES COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE OFFICIAL SURVEY AND PLAT FILED FOR RECORD IN THE OFFICE OF THE COUNTY CLERK OF SAID COUNTY AND STATE.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

PHOENIX FEDERAL SAVINGS AND LOAN ASSOCIATION,

Plaintiff,

vs.

HERBERT L. BOLEN and INEZ L. BOLEN, husband and wife; JOHN C. FLUD, Sr. and MARILYN FLUD, husband and wife; RICHARD A. ROBAK and SUSIE ROBAK, husband and wife; JOHN C. FLUD, Jr. and JANTHA K. FLUD, husband and wife; ANTHAN D. FULLER and JANICE M. FULLER, husband and wife; CARL ABLES and ANNA JO ABLES, husband and wife; LAKELAND REAL ESTATE DEVELOPMENT, INC.; JAMES M. HENRY and KAREIN HENRY, a/k/a KAREIN L. HENRY, husband and wife; QUINTON DODD and VICKIE E. DODD, husband and wife,

Defendants.

Case No. 89-C-754-C

(Consolidated with the following cases into Case No. 89-C-753-C:

Case No. 89-C-755-C;
Case No. 89-C-756-C;
Case No. 89-C-758-C;
and Case No. 89-C-759-C)

FILED

AUG 1 1990

[illegible] JUDGMENT

Now before this Court is the Motion for Summary Judgment of the Substituted Party-Plaintiff, Cimarron Federal Savings and Loan Association ("Cimarron"). Having reviewed the Report and Recommendation of U.S. Magistrate, the pleadings, affidavits and applicable law, the Court finds as follows:

I.

PROCEDURAL HISTORY

1. The Plaintiff commenced this case in the District Court of Mayes County Oklahoma on January 22, 1988.

NOTE: 1 THIS ORDER IS TO BE MAILED BY MOVANT TO ALL COUNSEL AND PRO SE LITIGANTS IMMEDIATELY UPON ENTRY.

2. The Defendants, Anthan D. Fuller and Janice M. Fuller, husband and wife, John C. Flud, Sr. and Marilyn Flud, husband and wife, Richard A. Robak and Susie Robak, husband and wife, Carl Ables and Anna Jo Ables, husband and wife, John C. Flud, Jr. and Jantha K. Flud, husband and wife, Herbert L. Bolen and Inez L. Bolen, husband and wife (the "Bolens") (the "Responding Defendants"), filed an Answer, Counterclaim and Cross-Claim alleging as affirmative defenses and Counterclaims certain wrong doings on the part of Phoenix Federal Savings and Loan Association ("Phoenix") and other defendants. The alleged wrong doings may generally be categorized as fraud in the inducement, failure of consideration, illegality, and breach of oral agreements.

3. On August 31, 1988, Phoenix was declared insolvent and the Federal Savings and Loan Insurance Corporation ("FSLIC") was appointed its receiver.

4. On August 31, 1988, the FSLIC, as Receiver of Phoenix transferred substantially all of the deposits, assets and secured liabilities of Phoenix to Cimarron Federal Savings and Loan Association ("Cimarron"), but reserved unto itself, among other things, any known or unknown claim, demand, cause of action, or judgment against Phoenix.

5. Pursuant to an Order of the District Court of Mayes County, Oklahoma entered December 12, 1988, Cimarron was substituted for Phoenix as the Party-Plaintiff.

6. On September 1, 1989, the FSLIC as Receiver of Phoenix was, by Order of the District Court of Mayes County, Oklahoma permitted to intervene as the real party in interest with respect to the Counterclaims of the Defendants, including those of the Responding Defendants.

7. Pursuant to the "Financial Institutions Reform, Recovery and Enforcement Act of 1989", the Federal Deposit Insurance Corporation, as Manager of the Federal Savings and Loan Insurance Corporation Resolution Fund, succeeded to all powers and duties of the FSLIC as Receiver of Phoenix (hereinafter the "FDIC-Receiver").

8. On September 14, 1989, the FDIC-Receiver removed this case to this court pursuant to 12 U.S.C. §1411.

9. This action was consolidated into Case No. 89-C-753-C by Order of this Court.

10. The FDIC-Receiver moved this Court to dismiss this action on October 23, 1989.

11. On November 22, 1989, the Responding Defendants filed their Response to the FDIC-Receiver's Motion to Dismiss.

12. On January 2, 1990, the substituted Party-Plaintiff, Cimarron, filed its Motion for Summary Judgment.

13. On February 6, 1990, the Responding Defendants filed their Response to Cimarron's Motion for Summary Judgment.

14. Cimarron filed, pursuant to Order of this Court granting leave to do so, its Reply to the Defendant's Response.

II.

RELATIONSHIP OF CLAIMS OF DEFENDANTS AGAINST THE FDIC-RECEIVER AND CIMARRON.

15. The affirmative defenses and counterclaims of the Defendants, including the Responding Defendants, derive from a common nucleus of operative facts.

16. The Motion to Dismiss of the FDIC-Receiver and Motion for Summary Judgment of Cimarron, both being at issue, are decided contemporaneously. See Order entered April 16, 1990, which sustains the FDIC-Receiver's Motion to Dismiss and Cimarron's Motion for Summary Judgment and affirms the Report and Recommendation of the Magistrate.

17. After considering the strong federal policy in favor of supporting the FDIC and FSLIC in their roles as protectors of the national financial system, the tests set forth in United Mine Workers v. Gibbs, 383 U.S. 715 (1966) and Jones v. Intermountain Power, 794 F.2d 546 (10th Cir. 1986), the values of judicial economy, fairness to the litigants, convenience and comity finds that Cimarron's state-law claims for judgment on its Note and for foreclosure of its Mortgage are pendent to the federal question decided contemporaneously and this Court exercises its discretionary power to decide those claims.

III.

CIMARRON'S CLAIMS FOR JUDGMENT ON ITS NOTES AND FOR FORECLOSURE OF ITS MORTGAGE.

The Court having construed the facts of this case in favor of the Defendants and having drawn all reasonable inferences therefrom in favor of the Defendants finds that there is no substantial controversy as to any material fact and Cimarron is entitled to judgment as a matter of law. The Court further finds and IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Cimarron as a "pass through institution" is entitled to at least the same protections as is the FDIC-Receiver.

2. Cimarron is entitled to at least holder in due course status and the protections afforded to the FDIC-Receiver by the D'Oench Duhme doctrine. Accordingly, the Defendants are estopped to assert the alleged wrong doings of Phoenix as defenses or counterclaims against Cimarron.

3. Cimarron's Motion for Summary Judgment is sustained.

4. The Defendants, Anthan D. Fuller and Janice M. Fuller, husband and wife, John C. Flud, Sr. and Marilyn Flud, husband and wife, Richard A. Robak and Susie Robak, husband and wife, Carl Ables and Anna Jo Ables, husband and wife, John C. Flud, Jr. and Jantha K. Flud, husband and wife, have entered an appearance herein by and through their counsel, Richardson, Meier & Associates, P.C. by Gregory G. Meier.

5. The Defendants, James M. Henry and Karein Henry, a/k/a Karein L. Henry, husband and wife, Lakeland Real Estate Development, Inc., and Quinton R. Dodd and Vickie E. Dodd,

husband and wife, have been dismissed from this action without prejudice.

6. The Defendants, Herbert L. Bolen and Inez L. Bolen, husband and wife, have previously entered an appearance herein by their attorney Tony Jack Lyons. Pursuant to Order of this Court, Tony Jack Lyons was permitted to withdraw from representation of the Bolens and the Bolens have proceeded pro se.

7. Cimarron is the owner and holder of the Notes and Mortgage being sued upon herein.

8. There is due Cimarron upon the Note and Mortgage described in Cimarron's Petition the sum of $133,148.65, together with interest accrued in the sum of $18,787.88 through March 15, 1989 and with interest continuing to accrue at 7.25% per annum, until paid, escrow deficiencies of $3,370.29, late charges of $427.24 as of December 31, 1987 and all costs of this action accrued and accruing.

9. Cimarron has a valid first lien upon the real estate and premises herein described on Exhibit "A" attached hereto (the "Property") by virtue of the Mortgage executed by the Responding Defendants which is recorded in Book 650 at Page 305 in the records of the County Clerk of Mayes County, Oklahoma.

10. The Defendants, Anthan D. Fuller and Janice M. Fuller, husband and wife, own an undivided 2/5 interest in the Property. The Defendants, John C. Flud, Jr. and Jantha K.

Flud, husband and wife, own an undivided 1/5 interest in the Property. The Defendants, Richard A. Robak and Susie Robak, husband and wife, own an undivided 1/5 interest in the Property. The Defendants, John C. Flud, Sr. and Marilyn Flud, husband and wife, own an undivided 1/5 interest in the Property.

11. Pursuant to a Loan Assumption and Modification Agreement, the Defendants, Anthan D. Fuller and Janice M. Fuller, husband and wife, assumed and agreed to pay the indebtedness owed by the Defendants, Herbert L. Bolen and Inez L. Bolen, husband and wife, to Cimarron. As part and parcel of this transaction, Herbert L. Bolen and Inez L. Bolen, husband and wife, were relieved of any and all personal liability associated with the execution of the underlying Promissory Note.

12. Pursuant to a Loan Assumption and Modification Agreement, the Defendants, Carl Ables and Anna Jo Ables, husband and wife, agreed and assumed to pay the indebtedness of the Defendants, Richard A. Robak and Susie Robak, husband and wife, to Cimarron. The Robaks were not relieved of personal liability associated with the execution of the Note.

13. The Defendants, John C. Flud, Sr. and Marilyn Flud, husband and wife, executed a Guaranty Agreement dated October 3, 1985, absolutely and unconditionally guaranteeing the indebtedness of John C. Flud, Jr. and Jantha K. Flud, husband and wife, to Cimarron up to $26,950.00.

14. Cimarron does have and recover on its Petition herein judgment in rem only against the Defendants, the Bolens, and judgment in personam against the Defendants and in the following amounts:

Defendant	Principal	Interest	Escrow Deficiencies
Anthan D. Fuller and Janice M. Fuller, husband and wife	$53,263.32	$3,106.05	$1,058.31
John C. Flud, Sr. and Marilyn Flud, husband and wife	$26,622.01	$1,279.17	$ 525.35
Richard A. Robak and Susie Robak, husband and wife, and Carl Ables and Anna Jo Ables, husband and wife	$26,622.01	$1,461.38	$ 527.19
John C. Flud, Jr. and Jantha K. Flud, husband and wife	$26,641.31	$1,644.67	$ 537.48

all together with interest continuing to accrue at the rate of 8.5% per annum from March 16, 1989, until paid, and for all costs of this action, including court costs accrued and accruing, abstracting expenses and a reasonable attorney's fee in the amount of $5,400.00 (collectively, the "Judgment").

15. The Mortgage herein sued upon provides that appraisement of the premises is waived or not waived at the option of the Mortgagee, and Cimarron has elected to have the real estate sold with appraisement.

16. Pursuant to 28 U.S.C. §2001(a), the Property is to be sold in accordance with the laws governing mortgage foreclosure sales in the State of Oklahoma.

17. The Mortgage of Cimarron be and the same is hereby foreclosed as to the Defendants' interest in the Property and the Defendants' interest in the Property is hereby ordered to be sold to satisfy the Judgment.

18. A special execution and order of sale with appraisement shall issue commanding the Sheriff of Mayes County, Oklahoma, to levy upon the Property and after having same appraised as provided by the laws of the State of Oklahoma, shall proceed to advertise and sell the Property as provided by the laws of the State of Oklahoma, and apply the proceeds arising from the sale as follows:

FIRST: In payment of the costs of the sale and of this action;

SECOND: In payment to the Plaintiff on its Judgment;

THIRD: That the residue, if any, be held to await the further order of this Court.

19. From and after the sale of the Property under and by virtue of this judgment and decree, the Defendants, and each of them, and all persons claiming under them or any of them, be and they are hereby forever barred and foreclosed of and from any and all right, title or interest, estate or equity in and to the Property or any part thereof.

DATED this 31st day of July, 1990.

(Signed) H. Dale Cook

JUDGE OF THE DISTRICT COURT

APPROVED:

Thomas J. Blalock, OBA #11763
KIMBALL, WILSON, WALKER & FERGUSON
301 N. W. 63rd Street, Suite 400
Oklahoma City, Oklahoma 73116
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ATTORNEYS FOR SUBSTITUTED PARTY-
PLAINTIFF, CIMARRON FEDERAL
SAVINGS AND LOAN ASSOCIATION

Gregory C. Meier
RICHARDSON, MEIER & ASSOCIATES, P.C.
5727 South Lewis, Suite 520
Tulsa, Oklahoma 74105

EXHIBIT "A"

LOT NUMBERED SIX (6), IN BLOCK NUMBERED SIX (6), OF THE VILLAS OF LAKELAND, A SUBDIVISION IN MAYES COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE OFFICIAL SURVEY AND PLAT FILED FOR RECORD IN THE OFFICE OF THE COUNTY CLERK OF SAID COUNTY AND STATE.

FILED

AUG 1 1990

Jack C. Silver, Clerk
U.S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

PHOENIX FEDERAL SAVINGS AND LOAN ASSOCIATION, Plaintiff, vs. ROBERT NEAL McGUIRE and SHARON E. McGUIRE, husband and wife; LAKELAND REAL ESTATE DEVELOPMENT, INC.; JAMES M. HENRY and KAREIN HENRY, a/k/a KAREIN L. HENRY, husband and wife; QUINTON R. DODD and VICKIE E. DODD, husband and wife, Defendants.	Case No. 89-C-753-C (Consolidated with the following cases into Case No. 89-C-753-C: Case No. 89-C-754-C; Case No. 89-C-755-C; Case No. 89-C-756-C; Case No. 89-C-758-C; and Case No. 89-C-759-C)

[redacted] JUDGMENT

Now before this Court is the Motion for Summary Judgment of the Substituted Party-Plaintiff, Cimarron Federal Savings and Loan Association ("Cimarron"). Having reviewed the Report and Recommendation of U.S. Magistrate, the pleadings, affidavits and applicable law, the Court finds as follows:

I.

PROCEDURAL HISTORY

1. The Plaintiff commenced this case in the District Court of Mayes County Oklahoma on January 22, 1988.

2. The Defendants, Robert Neal McGuire and Sharon E. McGuire, husband and wife (the "Responding Defendants"), filed an Answer, Counterclaim and Cross-Claim alleging as affirmative

NOTE: THIS ORDER IS TO BE MAILED BY MOVANT TO ALL COUNSEL AND PRO SE LITIGANTS IMMEDIATELY UPON RECEIPT.

defenses and Counterclaims certain wrong doings on the part of Phoenix Federal Savings and Loan Association ("Phoenix") and other defendants. The alleged wrong doings may generally be categorized as fraud in the inducement, failure of consideration, illegality, and breach of oral agreements.

3. On August 31, 1988, Phoenix was declared insolvent and the Federal Savings and Loan Insurance Corporation ("FSLIC") was appointed its receiver.

4. On August 31, 1988, the FSLIC, as Receiver of Phoenix transferred substantially all of the deposits, assets and secured liabilities of Phoenix to Cimarron Federal Savings and Loan Association ("Cimarron"), but reserved unto itself, among other things, any known or unknown claim, demand, cause of action, or judgment against Phoenix.

5. Pursuant to an Order of the District Court of Mayes County, Oklahoma entered December 12, 1988, Cimarron was substituted for Phoenix as the Party-Plaintiff.

6. On September 1, 1989, the FSLIC as Receiver of Phoenix was, by Order of the District Court of Mayes County, Oklahoma permitted to intervene as the real party in interest with respect to the Counterclaims of the Defendants, including those of the Responding Defendants.

7. Pursuant to the "Financial Institutions Reform, Recovery and Enforcement Act of 1989", the Federal Deposit Insurance Corporation, as Manager of the Federal Savings and Loan Insurance Corporation Resolution Fund, succeeded to all

powers and duties of the FSLIC as Receiver of Phoenix (hereinafter the "FDIC-Receiver").

8. On September 14, 1989, the FDIC-Receiver removed this case to this court pursuant to 12 U.S.C. §1411.

9. This action was consolidated into Case No. 89-C-753-C by Order of this Court.

10. The FDIC-Receiver moved this Court to dismiss this action on October 23, 1989.

11. On November 22, 1989, the Responding Defendants filed their Response to the FDIC-Receiver's Motion to Dismiss.

12. On January 2, 1990, the substituted Party-Plaintiff, Cimarron, filed its Motion for Summary Judgment.

13. On February 6, 1990, the Responding Defendants filed their Response to Cimarron's Motion for Summary Judgment.

14. Cimarron filed, pursuant to Order of this Court granting leave to do so, its Reply to the Defendant's Response.

II.

RELATIONSHIP OF CLAIMS OF DEFENDANTS AGAINST THE FDIC-RECEIVER AND CIMARRON.

15. The affirmative defenses and counterclaims of the Defendants, including the Responding Defendants, derive from a common nucleus of operative facts.

16. The Motion to Dismiss of the FDIC-Receiver and Motion for Summary Judgment of Cimarron, both being at issue, are decided contemporaneously. See Order entered April 16, 1990, which sustains the FDIC-Receiver's Motion to Dismiss

and Cimarron's Motion for Summary Judgment and affirms the Report and Recommendation of the Magistrate.

17. After considering the strong federal policy in favor of supporting the FDIC and FSLIC in their roles as protectors of the national financial system, the tests set forth in United Mine Workers v. Gibbs, 383 U.S. 715 (1966) and Jones v. Intermountain Power, 794 F.2d 546 (10th Cir. 1986), the values of judicial economy, fairness to the litigants, convenience and comity finds that Cimarron's state-law claims for judgment on its Note and for foreclosure of its Mortgage are pendent to the federal question decided contemporaneously and this Court exercises its discretionary power to decide those claims.

III.

CIMARRON'S CLAIMS FOR JUDGMENT ON ITS NOTES AND FOR FORECLOSURE OF ITS MORTGAGE.

The Court having construed the facts of this case in favor of the Defendants and having drawn all reasonable inferences therefrom in favor of the Defendants finds that there is no substantial controversy as to any material fact and Cimarron is entitled to judgment as a matter of law. The Court further finds and IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Cimarron as a "pass through institution" is entitled to at least the same protections as is the FDIC-Receiver.

2. Cimarron is entitled to at least holder in due course status and the protections afforded to the FDIC-Receiver by the D'Oench Duhme doctrine. Accordingly, the Defendants are

estopped to assert the alleged wrong doings of Phoenix as defenses or counterclaims against Cimarron.

3. Cimarron's Motion for Summary Judgment is sustained.

4. The Defendants, Robert Neal McGuire and Sharon E. McGuire, husband and wife, have entered an appearance herein by and through their counsel, Richardson, Meier & Associates, P.C. by Gregory G. Meier.

5. The Defendants, James M. Henry and Karein Henry, a/k/a Karein L. Henry, husband and wife, Lakeland Real Estate Development, Inc., and Quinton R. Dodd and Vickie E. Dodd, husband and wife, have been dismissed from this action without prejudice.

6. Cimarron is the owner and holder of the Notes and Mortgage being sued upon herein.

7. There is due Cimarron upon the Note and Mortgage described in Cimarron's Petition the sum of $54,464.06, together with interest accrued in the sum of $10,123.95 through March 15, 1989 and with interest continuing to accrue at 8.5% per annum, until paid, escrow deficiencies of $1,125.83, late charges of $245.14 as of December 31, 1987 and all costs of this action accrued and accruing.

8. Cimarron has a valid first lien upon the real estate and premises herein described on Exhibit "A" attached hereto (the "Property") by virtue of the Mortgage executed by the Defendants, Robert Neal McGuire and Sharon E. McGuire, husband and wife, and other persons who are not parties to

this action which is recorded in Book 648 at Page 748 in the records of the County Clerk of Mayes County, Oklahoma.

9. The Defendants, Robert Neal McGuire and Sharon E. McGuire, husband and wife, own an undivided 2/5 interest in the Property.

10. Cimarron does have and recover on its Petition herein judgment in personam against the Defendants, Robert Neal McGuire and Sharon E. McGuire, husband and wife in the sum of $54,464.06 together with accrued interest in the sum of $10,123.95 through March 15, 1989 and with interest continuing to accrue at 8.5% per annum, until paid, escrow deficiencies of $1,125.83, late charges of $245.14 as of December 31, 1987 with interest, and all costs of this action, including a reasonable attorney's fee in the amount of $5,400.00 (the "Judgment").

11. The Mortgage herein sued upon provides that appraisement of the premises is waived or not waived at the option of the Mortgagee, and Cimarron has elected to have the real estate sold with appraisement.

12. Pursuant to 28 U.S.C. §2001(a), the Property is to be sold in accordance with the laws governing mortgage foreclosure sales in the State of Oklahoma.

13. The Mortgage of Cimarron be and the same is hereby foreclosed as to the Defendants' 2/5 interest in the Property and the Defendants' 2/5 interest in the Property is hereby ordered to be sold to satisfy the Judgment. The

Mortgage of Cimarron shall be preserved as to the remaining 3/5 interest in the Property.

14. A special execution and order of sale with appraisement shall issue commanding the Sheriff of Mayes County, Oklahoma, to levy upon the Property and after having same appraised as provided by the laws of the State of Oklahoma, shall proceed to advertise and sell the Property as provided by the laws of the State of Oklahoma, and apply the proceeds arising from the sale as follows:

FIRST: In payment of the costs of the sale and of this action;

SECOND: In payment to the Plaintiff on its Judgment;

THIRD: That the residue, if any, be held to await the further order of this Court.

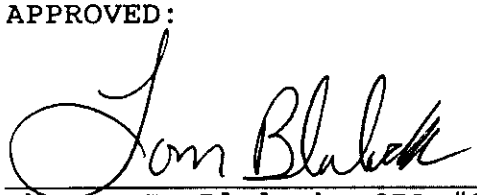
15. From and after the sale of the Property under and by virtue of this judgment and decree, the Defendants, and each of them, and all persons claiming under them or any of them, be and they are hereby forever barred and foreclosed of and from any and all right, title or interest, estate or equity in and to the Property or any part thereof.

DATED this 31st day of July, 1990.

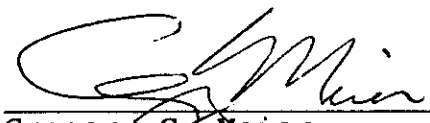
(Signed) H. Dale Cook

JUDGE OF THE DISTRICT COURT

APPROVED:



Thomas J. Blalock, OBA #11763
KIMBALL, WILSON, WALKER & FERGUSON
301 N. W. 63rd Street, Suite 400
Oklahoma City, Oklahoma 73116
(405) 843-8855
ATTORNEYS FOR SUBSTITUTED PARTY-
PLAINTIFF, CIMARRON FEDERAL
SAVINGS AND LOAN ASSOCIATION



Gregory C. Meier
RICHARDSON, MEIER & ASSOCIATES, P.C.
5727 South Lewis, Suite 520
Tulsa, Oklahoma 74105

EXHIBIT "A"

LOT NUMBERED SIX E (6e), IN BLOCK NUMBERED THREE (3), OF THE VILLAS OF LAKELAND, A SUBDIVISION IN MAYES COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE OFFICIAL SURVEY AND PLAT FILED FOR RECORD IN THE OFFICE OF THE COUNTY CLERK OF SAID COUNTY AND STATE.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 1 1990

Jack C. Silver, Clerk
U. S. DISTRICT COURT

SHOPMEN'S LOCAL 620 of the INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, AFL-CIO,

Plaintiff,

vs.

LEE C. MOORE CORPORATION,

Defendant.

Case No. 89-C-575-C

JUDGMENT ON DECISION BY THE COURT

This action came on for trial on June 25 and June 26, 1990, before the Court, Honorable H. Dale Cook, District Judge, presiding; and the issues having been duly tried and decision having been duly rendered pursuant to findings of facts and conclusion of law stated orally and recorded in open court on July 11, 1990.

IT IS ORDERED AND ADJUDGED that plaintiff take nothing, that judgment be entered in favor of defendant.

s/H. DALE COOK
H. Dale Cook
UNITED STATES DISTRICT JUDGE

APPROVED:

Thomas F. Birmngham, Esq.
UNGERMAN & IOLA
1323 East 71st Street
P. O. Box 701917
Tulsa, Oklahoma 74170-1917
(918) 495-0550

ATTORNEY FOR PLAINTIFF

R. Scott Savage, OBA #7926
MOYERS, MARTIN, SANTEE,
IMEL & TETRICK
320 S. Boston, Suite 920
Tulsa, Oklahoma 74103
(918) 582-5281

ATTORNEY FOR DEFENDANT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

HONG KONG TV VIDEO PROGRAM, INC., Plaintiff,	)	
vs.	)	No.88-C-646-C
UT LE, dba NAM HAI MARKET, et al, Defendants,	)	
vs.	)	
LIN TA, dba THANH HA VIDEO, Third-Party Defendant.	)	

JUDGMENT

This third party action by Ut Le and Loi Thi Van against Lin Ta came on for trial on March 12, 1990, before the Court, Hon. Dale Cook, Chief U.S. District Judge, presiding. The issues having been duly tried, the Court hereby FINDS as follows:

1. The third party plaintiffs Ut Le and Loi Thi Van, doing business as Nam Hai Market, purchased a number of oriental language videotapes from third party defendant Lin Ta, doing business as Thanh Ha Video in Oklahoma City.

2. Of the videotapes purchased from Lin Ta, 726 tapes had been wrongfully counterfeited by Lin Ta or by persons working for her and under her direction and control.

3. Third party plaintiffs' possession of 726 counterfeit videotapes obtained from Lin Ta prompted the plaintiff Hong Kong

TV Video Program, Inc., the owner of the copyrights in such videotapes, to commence the above-captioned action and to seize 1697 videotapes from the Nam Hai Market.

4. Third party defendant Lin Ta's wrongful conduct proximately caused injury to the third party plaintiffs in the amount of $22,297.51.

IT IS THEREFORE ORDERED AND ADJUDGED that the third party plaintiffs Ut Le and Loi Thi Van, doing business as Nam Hai Market, recover of the third party defendant Lin Ta the sum of Twenty-two Thousand Two Hundred Ninety-seven Dollars and Fifty-one cents ($22,297.51), with interest thereon at the rate as provided by law, and their costs of the action.

Dated at Tulsa, Oklahoma, this 31st day of July 1990.

(Signed) H. Dale Cook

Chief U.S. District Judge

Approved as to Form:

William E. Hughes
Attorney for Third Party Plaintiffs

Walter Charles Moore
Attorney for Third Party Defendant

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. WILLIAM R. COATES; STATE OF OKLAHOMA ex rel. OKLAHOMA TAX COMMISSION; COUNTY TREASURER, Tulsa County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, Defendants.	FILED AUG 1 1990 Jack C. Silver, Clerk U.S. DISTRICT COURT CIVIL ACTION NO. 90-C-235-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 1st day of August, 1990. The Plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney; the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission appears by Lisa Haws, Assistant General Counsel; the Defendants County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, appear by J. Dennis Semler, Assistant District Attorney, Tulsa County, Oklahoma; and the Defendant, William R. Coates, appears not, but makes default.

The Court being fully advised and having examined the file herein finds that the Defendant, William R. Coates, acknowledged receipt of Summons and Complaint on May 5, 1990; that Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, acknowledged receipt of Summons and Complaint on March 22, 1990; that Defendant, County Treasurer, Tulsa County,

NOTE: THIS ORDER IS TO BE MAILED BY MOVANT TO ALL COUNSEL AND PRO SE LITIGANTS IMMEDIATELY UPON RECEIPT.

Oklahoma, acknowledged receipt of Summons and Complaint on March 22, 1990; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on March 22, 1990.

It appears that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission filed its Answer on April 17, 1990; the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answer on April 11, 1990; and that the Defendant, William R. Coates, has failed to answer and his default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

> Lot Seven (7), Block One (1), in XYLER HEIGHTS ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that William J. Coates and Thelma Coates became the record owners of the real property involved in this action, by virtue of that certain Warranty Deed dated March 21, 1974, from Donald E. Johnson, as Administrator of Veterans Affairs, to William J. Coates and Thelma Coates, husband and wife, as joint tenants and not as tenants in common, with full right of survivorship, the whole estate to vest in the

survivor in the event of the death of either, which Warranty Deed was filed of record on March 25, 1974, in Book 4111, Page 897, in the records of the County Clerk of Tulsa County, Oklahoma.

The Court further finds that on March 22, 1974, William J. Coates and Thelma Coates executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage note in the amount of $9,500.00, payable in monthly installments, with interest thereon at the rate of 8.25 percent (8.25%) per annum.

The Court further finds that as security for the payment of the above-described note, William J. Coates and Thelma Coates executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a real estate mortgage dated March 22, 1974 covering the above-described property. Said mortgage was recorded on March 25, 1974 in Book 4111, Page 913, in the records of Tulsa County, Oklahoma.

The Court further finds that, on June 10, 1985, Thelma Coates died as was determined in the Decree Determining Death and Terminating Tenancy, Case No. P-86-590, dated September 22, 1986 and recorded on September 22, 1986, in the District Court, Tulsa County, Oklahoma. Upon the death of Thelma Coates, the subject property vested in her surviving joint tenant, William J. Coates, by operation of law.

The Court further finds that, on May 14, 1986, William J. Coates executed a Quit-Claim Deed conveying all his right, title, and interst in the subject real property to William R. Coates. This Quit-Claim Deed was recorded on October 31, 1986, in Book 4979, Page 1936, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, William J. Coates and Thelma Coates, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof, there is now due and owing to the Plaintiff the principal sum of $7,670.99 plus interest at the rate of 8.25 percent per annum from March 1, 1988 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of $4.00 for service of Summons and Complaint.

The Court further finds that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, has a lien on the property which is the subject matter of this action by virtue of Tax Warrant No. ITI89002756 dated February 17, 1989 in the amount of $246.33 plus interest and penalty according to law.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against the Defendants, William J. Coates and Thelma Coates, in the principal sum of $7,670.99, plus interest at the rate of 8.25 percent per annum from March 1, 1988 until judgment, plus interest thereafter at the current legal rate of 7.87 percent per annum until paid, plus the costs of this action in the amount of $4.00 for service of Summons and Complaint, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums of the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defenant, State of Oklahoma ex rel. Oklahoma Tax Commission, have and recover judgment in rem in the amount of $246.33 plus interest and penalty according to law by virtue of Tax Warrant No. ITI89002756 dated February 17, 1989.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff.

Third:

In payment of the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, in the amount of $246.33 together with interest and penalty according to law.

Fourth:

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney

PETER BERNHARDT, OBA #741
Assistant United States Attorney

J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

LISA HAWS, OBA #12,695
Assistant General Counsel
Attorney for State of Oklahoma ex rel.
Oklahoma Tax Commission

Judgment of Foreclosure
Civil Action No. 90-C-235-C

PB/esr

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

NORTHWESTERN PACIFIC INDEMNITY COMPANY,

Plaintiff,

vs.

No. 90-C-201-C

APRIL CULWELL, GABRIELLE RICHARDS, and NEUROLOGICAL SURGERY, INC., and SAINT FRANCIS HOSPITAL,

Defendants,

and

APRIL CULWELL,

Third Party Plaintiff

vs.

LISA GALLERY, COMMERCIAL UNION INS. CO., a foreign corporation, and the NORTHERN ASSURANCE COMPANY OF AMERICA a foreign corp.,

Third Party Defendant

FILED
AUG 1 1990
Jack C. Silver, Clerk
U.S. DISTRICT COURT

O R D E R

NOW ON this 31st day of July, 1990, this matter came on for hearing. The Court being fully advised in the premises hereby finds that this matter is dismissed as an agreement has been reached by the parties.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that this matter is hereby dismissed.

JUDGE OF THE UNITED STATES DISTRICT COURT

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